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Directorate General of Human Rights and Legal Affairs (DG-HL)

and the **Office of the Commissioner for Human Rights**

*The selection of the information contained on this Issue and deemed relevant to NHRs
is made under the joint responsibility of the NHRs Unit
and the Office of the Commissioner for Human Rights*

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Introduction

This issue is part of the "Regular Selective Information Flow" (RSIF). Its purpose is to keep the National Human Rights Structures permanently updated of Council of Europe norms and activities by way of regular transfer of information, which the National Human Rights Structures Unit of the DG-HL (NHRU Unit) and the Office of the Commissioner for Human Rights carefully select and try to present in a user-friendly manner. The information is sent to the Contact Persons in the NHRUs who are kindly asked to dispatch it within their offices.

Each issue covers two weeks and is sent by the NHRU Unit to the Contact Persons a fortnight after the end of each observation period. This means that all information contained in any given issue is between two and four weeks old.

Unfortunately, the issues are available in English only for the time being due to the limited means. However, the majority of the documents referred to exists in English and French and can be consulted on the web sites that are indicated in the issues.

The selection of the information included in the issues is made by the NHRU Unit and the Office of the Commissioner for Human Rights. It is based on what is deemed relevant to the work of the NHRUs. A particular effort is made to render the selection as targeted and short as possible.

Readers are expressly encouraged to give any feed-back that may allow for the improvement of the format and the contents of this tool.

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Auswärtiges Amt

Part I : The activities of the European Court of Human Rights

A. Judgments

1. Judgments deemed of particular interest to NHRs

The judgments presented under this heading are the ones for which a separate press release is issued by the Registry of the Court as well as other judgments considered relevant for the work of the NHRs. They correspond also to the themes addressed in the Peer-to-Peer Workshops. The judgments are thematically grouped. The information, except for the comments drafted by the NHRs Unit and the Office of the Commissioner for Human Rights, is based on the [press releases of the Registry of the Court](#).

Some judgments are only available in French.

Please note that the Chamber judgments referred to hereunder become final in the circumstances set out in Article 44 § 2 of the Convention : “a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or c) when the panel of the Grand Chamber rejects the request to refer under Article 43”.

Note on the Importance Level :

According to the explanation available on the Court’s website, the following importance levels are given by the Court:

1 = High importance, Judgments which the Court considers make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular State.

2 = Medium importance, Judgments which do not make a significant contribution to the case-law but nevertheless do not merely apply existing case-law.

3 = Low importance, Judgments with little legal interest - those applying existing case-law, friendly settlements and striking out judgments (unless these have any particular point of interest).

Each judgment presented in section 1 and 2 is accompanied by the indication of the importance level.

- **Grand Chamber judgment – Right to a fair trial**

Gorou v. Greece (No. 2) (Grand Chamber) (no. 12686/03) (Importance 1) – 20 March 2009 - **Applicability but no violation of Article 6 § 1 – Existence of a dispute over a civil right concerning the claim for compensation of a civil party in criminal proceedings – No duty for the Public Prosecutor to justify his decision in the applicant’s case - Violation of Article 6 § 1 - Excessive length of proceedings**

The applicant is a civil servant in the Greek Ministry of National Education and at the relevant time was working in Stuttgart on secondment to the Bureau for the primary education of Greek children abroad. On 2 June 1998 she filed a criminal complaint for perjury and defamation against her immediate superior, with an application to join the proceedings as a civil party. She accused her superior of stating, in connection with an administrative investigation opened against her, that she did not observe working hours and did not get on well with her colleagues. On 26 September 2001, after hearing representations from the applicant in open court, the Athens Criminal Court acquitted her former superior, finding that the offending remarks had been truthful and that it had not been the defendant’s intention to defame or insult her. The judgment was finalised and entered in the court’s register on 5 August 2002. On 24 September of that year the applicant requested the public prosecutor at the Court of Cassation to lodge an appeal on points of law against the judgment, alleging that it had not contained sufficient reasoning. By means of a somewhat terse note, the public prosecutor dismissed the request as unfounded.

Relying on Article 6 § 1, the applicant alleged, first, that the public prosecutor's decision dismissing her request for an appeal on points of law had not been sufficiently reasoned and, second, that the length of the proceedings had been excessive, contrary to the "reasonable time" requirement.

The Government had contested the applicability of Article 6 § 1, arguing that there had been no dispute ("*contestacion*") over a civil right, within the meaning of that provision. The Court dismissed that argument. First, it took the view that, although the Convention did not confer any right to have third parties prosecuted or sentenced for a criminal offence, the proceedings in which Mrs. Gorou had been a civil party had not only involved the right to a good reputation but had also had an economic aspect, on account of the sum – however symbolic – which the applicant had claimed by way of damages. Secondly, the Court observed that it would be more faithful to the reality of the domestic legal order to take into consideration the well-established judicial practice whereby the civil party could request the public prosecutor to appeal on points of law. The Court found that the applicant's request to the public prosecutor at the Court of Cassation had been a logical part of a challenge to the judgment in which her claim for compensation as a civil party had been rejected and that there had thus still been a dispute for the purposes of Article 6 § 1.

On the merits, the Court reiterated its case-law to the effect that an appellate court is not necessarily required to give very detailed reasoning when it decides on the admissibility of an appeal on points of law. In the applicant's case, it took the view that the public prosecutor did not have a duty to justify his decision, which would have placed on him an additional burden that was not imposed by the nature of the request, but only to give a response to the civil party. Accordingly, the Court found that there had been no violation of Article 6 § 1 of the Convention in respect of the complaint that the decision lacked reasoning. However, the Court confirmed the Chamber's finding of a violation in respect of the excessive length of the proceedings.

Judges Zagrebelsky, Hajiyev, Jaeger, Björgvinsson, Villiger and Berro-Lefèvre expressed a separate opinion. Partly dissenting opinions were expressed by Judges Casadevall, Kalaydjieva and Malinverni, the latter being joined by Judge Sajó. These opinions are appended to the judgment.

- **Right to life and effective investigation**

Death in the army

[Beker v. Turkey](#) (no. 27866/03) (Importance 2) - 24 March 2009 - Violation of Article 2 - Burden of the proof in areas under exclusive control of the State - Lack of a meaningful investigation capable of establishing the facts surrounding the death

The applicants are the mother, brothers and sister of Mustafa Beker, born in 1977, who, an expert corporal in the Tunceli gendarmerie, was found shot in the head in his army barracks dormitory on 8 March 2001. The case concerned the applicants' allegation that, even though the official military investigation concluded that Mustafa had committed suicide, their relative had either been murdered or had died due to negligence.

Found shot in the head by a non-commissioned officer just before 9.30 a.m. on 8 March 2001, Mustafa, still alive, was taken to the infirmary. He subsequently died on his way to hospital. On 8 November 2002 the military investigation was closed. It was concluded that Mustafa Beker, unhappy because his mother had opposed his marriage to his girlfriend, had shot himself in the right temple, at close range.

Despite the applicants' and their lawyer's numerous requests, the military authorities refused to divulge any information or documents about the investigation. Most recently, in March 2003, the applicants requested the inquiry to be reopened; to date they have not had a reply.

The Court stressed that it must first establish whether the respondent State is under an obligation to account for Mr. Beker's death. To that end the Court reiterated that, according to its established case-law, "*States bear the burden of providing plausible explanations for injuries and deaths occurred in custody, failing which a clear issue arises under Article 3 or 2 of the Convention*" (see, respectively, *Selmouni v. France* [GC] of 28 July 1999). The underlying reason for this is that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them.

Further the Court noted that since the adoption of the judgment in the case of *Akkum and Others v. Turkey* of 24 March 2005 the above-mentioned obligation has been held to cover injuries or deaths which occurred, not only in custody, but also in areas within the exclusive control of the authorities of the State because, in both situations, the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities.

In order to establish whether the Government have satisfactorily discharged that burden, the Court had regard to the investigation carried out by the military authorities and the conclusions reached by them. When notice of the present application was given to the Government, the facts as presented by the applicants led the Court to put a number of specific questions relating to the way in which the military had conducted their inquiry which concluded that Mr. Beker had committed suicide. The Court noted with regret that the replies received are incapable of dispelling the very serious misgivings it had about this investigation.

The Court concluded that in view of the apparent carelessness with which the investigation was conducted, the fact that the conclusion reached defies logic, the unwillingness to reopen the investigation, and the lack of satisfactory explanations (see paragraphs 45 and 46) proffered by the Government, the applicants could be forgiven for thinking that the investigation might be covering up a more sinister explanation, such as murder.

In the light of the foregoing, the Court considered that no meaningful investigation was conducted at the domestic level capable of establishing the true facts surrounding the death of Mustafa Beker. Consequently, it held unanimously that the Government had failed to account for this death and the State must bear the responsibility for it.

Death in a sobering up centre

[Mojsiejew v. Poland](#) (no. 11818/02) (Importance 1) - 24 March 2009 - Violation of Article 2 on account of the failure of the State to explain the circumstances in which the applicant's son had died in a sobering up centre, and of the ineffective investigation carried out into his death

The case concerned Ms Mojsiejew's allegation that staff of a sobering-up centre were responsible for the death of her 25-year-old son, Hubert Mojsiejew, on 28 August 1999 as a result of the steps taken to immobilise him and the lack of ensuing supervision of his state of health. On 28 August 1999 Hubert Mojsiejew was taken to a sobering up centre, where he was taken to an isolation cell, immobilised with belts and left. He was found dead by staff a few hours later.

Article 2 (investigation)

The general principles of the Court's case law figure in §§ 49-52. The Court noted that, although the investigation had been concluded in little over a year, the trial in the case had started more than two years after charges had been brought against the accused. Moreover, Hubert Mojsiejew's body had not been examined at the place where it had been found, which had made it impossible to establish the time of his death and thus determine the personal responsibility of each of the accused. Indeed, Władysława Mojsiejew had only been heard by the court for the first time almost five years after the death of her son, and, in addition to a number of other delays which had occurred during the domestic court proceedings, the case was still pending on May 2008. The Court therefore concluded that the Polish authorities had failed to carry out a prompt and effective investigation into the death of Hubert Mojsiejew, in violation of Article 2.

Article 2 (death of Hubert Mojsiejew)

The Court first held that, although the proceedings were still pending before the domestic authorities, it was not prevented from examining whether the State was responsible for the investigation carried out into Hubert's death.

*"The criminal proceedings against the employees of the centre are pending before the domestic authorities and the issue of their guilt is a matter for the jurisdiction of the Polish criminal court alone (see *Avşar v. Turkey*, no. 25657/94, § 404, ECHR 2001-VII (extracts), and *Nikolova and Velichkova* [...]). However, whatever the outcome of the domestic proceedings, the conviction or acquittal of the centre's employees does not absolve the respondent State from its responsibility under the Convention (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).*

*As in other cases regarding death in custody, the burden rests on the State to provide a satisfactory and plausible explanation of how Hubert Mojsiejew's death was caused (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 113, ECHR 2001-III)" (§§ 61-62).*

Having regard to the overall length of the period which has elapsed since the death of the applicant's son and also to the conclusion above that the Government failed to satisfy the burden of proof lying on them to provide a satisfactory and convincing explanation as regards Hubert Mojsiejew's death, the Court found that he was deprived of his life in circumstances engaging the responsibility of the respondent State under the Convention. There has accordingly been a substantive breach of Article 2 of the Convention on account of Hubert Mojsiejew's death.

- **III treatment (medical examination in police custody) and effective investigation**

Salmanoğlu and Polattaş v. Turkey (no. 15828/03) (Importance 2) - 17 March 2009 - Violation of Article 3

Relying in particular on Article 3, the applicants alleged that they were subjected to ill-treatment while in police custody, notably sexual abuse and rape, and that the investigation into their allegations was inadequate. They also alleged that they were subjected to “virginity tests”, in breach of Article 14 (prohibition of discrimination).

General principles regarding medical examinations

*“The Court reiterates that the medical examination of persons in police custody, together with the right of access to a lawyer and the right to inform a third party of the detention, constitutes one of the most essential safeguards against ill-treatment (see *Türkan v. Turkey*, no. 33086/04, § 42, 18 September 2008; *Algür v. Turkey*, no. 32574/96, § 44, 22 October 2002). Moreover, evidence obtained during forensic examinations plays a crucial role during investigations conducted against detainees and in cases where the latter raise allegations of ill-treatment. Therefore, in the Court’s view, the system of medical examination of persons in police custody is an integral part of the judicial system. Against this background, the Court’s first task is to determine whether, in the circumstances of the present case, the national authorities ensured the effective functioning of the system of medical examination of persons in police custody.*

*The Court has already reaffirmed the European Committee for the Prevention of Torture’s (“CPT”) standards on the medical examination of persons in police custody and the guidelines set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “Istanbul Protocol”, (submitted to the United Nations High Commissioner for Human Rights, 9 August 1999). The Court has held that all health professionals owe a fundamental duty of care to the people they are asked to examine or treat. They should not compromise their professional independence by contractual or other considerations but should provide impartial evidence, including making clear in their reports any evidence of ill-treatment (see *Osman Karademir v. Turkey*, no. 30009/03, § 54, 22 July 2008). The Court has further referred to the CPT’s standard that all medical examinations should be conducted out of the hearing, and preferably out of the sight, of police officers. Further, every detained person should be examined on his or her own and the results of that examination, as well as relevant statements by the detainee and the doctor’s conclusions, should be formally recorded by the doctor (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 118, ECHR 2000-X; *Mehmet Eren v. Turkey*, no. 32347/02, § 40, 14 October 2008). Moreover, an opinion by medical experts on a possible relationship between physical findings and ill-treatment was found to be a requirement by the Court (see *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 29, 20 July 2004)” (§§ 79-80).*

Application

The Court considered that the consistency of the applicants’ submissions, the seriousness of their allegations, their ages at the time of the events and the medical reports issued by the Turkish Medical Association, the Istanbul University and the 4th Section of the Forensic Medicine Institute together raised a reasonable suspicion that the applicants could have been the subject of ill-treatment, as alleged. Consequently, the Court ascertained which part of the medical evidence submitted by the parties should be taken into consideration in order to determine the merits of the applicants’ allegations of ill-treatment. In this respect, the Court considered the applicants’ forensic examinations at the end of their detention in police custody with a view to establishing whether those examinations could have produced reliable medical evidence.

As concerned the applicants’ examinations at the end of their detention in police custody, the Court observed that at least on one occasion in March 1999, the applicants had been examined simultaneously in the same room while police officers could hear their conversations with the doctor and had a view of the examination room if they wished. That clearly fell short of the standards recommended by the Council of Europe’s Committee for the Prevention of Torture (the “CPT”). Indeed, the nurse who had been present during a rectal examination of Fatma Polattaş in April 1999 had told the assize court that there had been a prison guard in the examination room.

Furthermore, the Court was particularly struck by the fact that the doctors who had examined the applicants during their police custody, without using the standard medical forms, had merely recorded their findings on the letters sent to them by police headquarters requesting their medical expertise. That clearly disregarded instructions issued by the Turkish Ministry of Health in 1995 and 1997. What was more, the doctors had only written down that they had not observed any sign of physical violence on the applicants’ bodies; none had noted down the detainees’ statements or conclusions.

The applicants had also been subjected to “virginity tests” at the start of their detention in police custody, allegedly following their complaints of sexual violence. However, the Government had not submitted any proof of written consent. In any case, even assuming that the applicants had given their consent, the Court considered that there could be no medical or legal necessity to justify such an intrusive examination as the applicants had not yet complained of sexual assault when the tests had been carried out. The tests in themselves could therefore be considered to have constituted discriminatory and degrading treatment.

The Court therefore found that, in the applicants’ case, the national authorities had failed to ensure that the system of medical examinations of those placed in police custody had functioned effectively.

Moreover, the reports of 23 October 2000, 5 March 2003 and 25 August 2004 were conclusive evidence in the applicants’ favour. The Government had not challenged the accuracy of those medical reports or provided any other plausible explanation for the post-traumatic stress disorder diagnosed in the report of 23 October 2000.

Therefore, given the circumstances of the case as a whole, and in particular the virginity tests carried out without any medical or legal necessity as well as the post-traumatic stress and depressive disorders suffered, the Court was persuaded that the applicants, only 16 and 19 at the relevant time, had been subjected to severe ill-treatment during their detention in police custody, in violation of Article 3. It held by four votes to three that there had been a violation of Article 3.

Ineffectiveness of the investigation

The Court was struck by the fact that the proceedings in question had not produced any result even after seven years, mainly on account of the substantial delays throughout the proceedings and, decisively, when the statutory limitations in domestic law were applied.

The Court therefore unanimously concluded that the Turkish authorities had not effectively investigated the applicants’ allegations of ill-treatment, in further violation of Article 3.

Article 14

Finally, the Court held unanimously that there was no need to examine separately the complaint under Article 14.

- **Confinement in psychiatric institution**

Houtman and Meeus v. Belgium (no. 22945/07) (Importance 2) - Violation of Article 5 § 5 (enforceable right to compensation) - Failure of the Belgian courts to compensate the applicants for unlawful confinement in a psychiatric institution

The applicants are Godelieve Houtman and her husband Thomas Meeus. The case concerned Godelieve Houtman’s confinement for several days in a psychiatric institution, against her will. On 12 May 1993 the applicants reported to the accident and emergency department of Gasthuisberg university hospital in Louvain (Belgium), where anti-psychotic medication and sedatives were administered to Mrs Houtman, who was in a very agitated state as she suspected her husband of committing adultery. The following day Mrs Houtman was transferred, at the instigation of the doctors who had examined her, to St Jozef university psychiatric hospital in Kortenberg (Belgium). The head of the psychiatric department assumed that Mrs Houtman had consented to the treatment. However, during the registration process the latter indicated that she was opposed to her confinement. On the same day she contacted her general practitioner, requesting the latter to secure her release from the hospital. Mrs Houtman finally left the psychiatric hospital on 17 May 1993 after the public prosecutor’s office intervened in response to a request from her sister and some of her friends.

On 1 July 1993 the applicants brought an action for damages against the doctors involved in Mrs Houtman’s confinement and against the psychiatric hospitals concerned. They considered that her deprivation of liberty had been unlawful, and claimed compensation for the damage sustained as a result of her compulsory confinement. The Belgian courts acknowledged, among other things, that the applicant had been placed in the psychiatric hospital without the procedure before a magistrate, provided for by the Law of 26 June 1990, having been initiated. However, they refused to award compensation on the ground that there was no causal link between this breach of domestic procedure and the damage alleged. In November 2005 the Brussels Court of Appeal found that the applicant’s confinement had resulted not from a “fault” but from a “state of health” and that the applicants had not demonstrated that the alleged damage had been caused by the breach of the law. In December 2006 the Court of Cassation dismissed an appeal by the applicants on points of law.

The European Court of Human Rights noted a failure in this case to comply with the fundamental provisions of the Law of 26 June 1990. The Court of Appeal, moreover, had expressly recognised this

fact in its judgment, stressing that even if the doctors had believed that the applicant's confinement would be of short duration, the statutory procedure should have been followed to the letter. The Court of Appeal's finding that the applicant's confinement had been appropriate and warranted by her state of health had effectively sought to justify a decision taken in breach of the statutory procedure and resulting in a period of confinement that could have lasted for some time: on 13 May, a doctor had told Mr Meeus that it could last for two to three weeks.

Hence, the Court of Appeal's conclusion amounted to an acknowledgement of the fact that the applicant had been subjected to a deprivation of liberty contrary to Article 5 § 1 of the Convention (right to liberty and security). This, according to the Court's case-law, created a direct right to compensation. Accordingly, the Court considered that the Belgian courts had not interpreted and applied the domestic law in the spirit of Article 5 § 1, and held that there had been a violation of Article 5 § 5. Judge Sajó expressed a partly dissenting opinion, which is annexed to the judgment.

- **Restoration of legal capacity for a person suffering mental disorder**

[Berková v. Slovakia](#) (no. 67149/01) (Importance 2) - Violation of Article 6 § 1 (length) - Violation of Article 8 - Violation of Article 13 – Restoration of legal capacity

The case concerned Ms Berková's complaint that, suffering from a mental disorder which had resulted in a guardian being appointed for her, in 1999 the domestic courts refused to restore her full legal capacity and decided that she was not allowed to make any further such request for the next three years. She also complained in particular about the excessive length of proceedings concerning her divorce, division of matrimonial property and maintenance. She relied on Article 6 § 1 (right to a fair hearing within a reasonable time), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy).

The Court held unanimously that there had been a violation of Article 6 § 1 and Article 13 in respect of the excessive duration of the three sets of proceedings at issue. The Court further held that there had been a violation of Article 8 because Ms Berková had been prevented for too long from applying to have her legal capacity restored.

- **Deportation cases**

[Abdelhedi v. Italy](#) (no. 2638/07) (Imp. 3) - [Ben Salah v. Italy](#) (no. 38128/06) (Imp. 3) - [Bouyahia v. Italy](#) (no. 46792/06) (Imp. 3) - [C.B.Z. v. Italy](#) (no. 44006/06) (Imp. 3) - [Darraji v. Italy](#) (no. 11549/05) (Imp. 3) - [Hamraoui v. Italy](#) (no. 16201/07) (Imp. 3) - [O. v. Italy](#) (no. 37257/06) (Imp. 3) - [Soltana v. Italy](#) (no. 37336/06) (Imp. 3) – 24 March 2009 - Violation of Article 3 (treatment) – Risk of torture in case of deportation to Tunisia

The applicants are Tunisian nationals living in Italy. In the eight cases the applicants alleged, in particular, under Article 3 of the Convention that enforcement of the decisions ordering their deportation to Tunisia would place them at risk of torture. In addition, the applicants in **Ben Salah**, **Darraji** and **Hamraoui** relied on Article 2 (right to life) of the Convention, and the applicants in **C.B.Z.**, **O.** and **Soltana** on Article 8 (right to respect for private and family life). In the cases of **Bouyahia** and **Darraji**, the applicants also relied on Article 6 (right to a fair trial).

The European Court of Human Rights reiterated that in its Grand Chamber judgment in the case of **Saadi v. Italy** (28 February 2008, application no 37201/06), it had concluded that many international sources referred to numerous and regular instances of torture and ill-treatment inflicted in Tunisia on persons suspected or found guilty of terrorism, and that visits by the International Committee of the Red Cross to Tunisian prisons could not exclude the risk of subjection to treatment contrary to Article 3. In these eight cases it did not see any reason to review those conclusions, which had moreover been confirmed by Amnesty International's report on Tunisia for 2008. Furthermore, the Court was unable to accept the Italian Government's submission that the diplomatic assurances given by the Tunisian authorities offered effective protection against the serious risk of ill-treatment run by the applicants. Accordingly, the Court concluded – unanimously – that, in the event that the decisions to deport the applicants to Tunisia were enforced, there would be a violation of Article 3. It also held that there was no need to examine the applicants' complaints under Articles 2, 8 and 6.

- **Pre-trial detention**

Krejčíř v. Czech Republic (nos. 39298/04 and 8723/05) (Importance 1) – 26 March 2009 - Violation of Article 5 § 3 - Unlawfulness of the decision extending the applicant's detention - No violation of Article 5 § 3 - Ability to benefit from release conditioned by guarantees - Violation of Article 5 § 4 - Review by a court of the applicant's detention.

Mr Krejčíř relied on Articles 5 § 3 and 5 § 4. He complained of the unlawfulness of the decision to keep him in detention and of having been unable to obtain release conditioned by guarantees. He also complained that the proceedings concerning review of the lawfulness of his detention had not complied with the requirements of the Convention.

Article 5 § 3

Lawfulness of the extension of Mr Krejčíř's detention

The Court reiterated that the conditions for deprivation of liberty had to be clearly defined under domestic law and that the law itself had to be foreseeable in its application and meet the standard of "lawfulness" set by the Convention. It noted that the decision of 23 October 2003 did not refer to Article 71 § 2 of the CCP and did not mention the length of the detention.

The Court also pointed out that the prosecutor who had taken the decision of 19 December 2003, referring in the reasons for his decision to Article 71 § 2 of the CCP, did not offer the requisite guarantees of independence, and that when this decision was ratified by the Supreme Court the three-month time-period had expired.

The Czech Constitutional Court had acknowledged that the CCP did not indicate the manner in which the three-month period should be declared non-applicable under the second sentence of Article 71 § 2. The Court considered that a gap of that kind in the domestic law was contrary to the requirements of legal certainty and foreseeability and that the situation created in the present case had infringed the applicant's right guaranteed by Article 5 § 3. The Court accordingly found a violation of Article 5 § 3.

Mr Krejčíř's ability to obtain release conditioned by guarantees

The Court reiterated that the domestic courts had to review a person's continued pre-trial detention in order to guarantee his or her release where circumstances no longer justified the deprivation of liberty. In this case, up until 7 June 2004 the applicant had been detained on the grounds of a risk that he might bring pressure to bear on witnesses provided for in Article 67 (b) of the CCP, which legally prevented him from having the offer of guarantees he had made in his first two applications for release examined by the courts.

The Court observed that in the present case the lack of review by a court had concerned only the guarantees that were meant to replace the applicant's pre-trial detention, that this lack of a review had been limited in time, and that the applicant had not been deprived of all review of the continuing grounds justifying the deprivation of his liberty. The Court noted that the Czech courts had had the option of ordering his unconditional release throughout the duration of the criminal proceedings brought against the applicant. Accordingly, it held that there had not been a violation of Article 5 § 3 in that respect.

Article 5 § 4

The Court observed that proceedings in which an appeal against a detention order was being examined must be adversarial, and equality of arms between the parties – that is, the prosecutor and the detained person – ensured.

In the present case Mr Krejčíř's appeal against the district court's decision of 20 September 2003 remanding him in custody was examined without a hearing and in the absence of the parties. The Court noted, however, that the City Court had considerably developed and specified the grounds for detention that had previously been expressed in vague terms by the district court.

The Court pointed out that although the applicant had been able to consult all the documents in the case file, he had not been able to foresee the facts on which the court would rely as grounds for placing him in detention. It observed that it was actually the facts referred to by the Prague Court that had justified suspending the three-month time-limit on grounds of a risk of pressure being brought to bear on witnesses. Regarding the dismissal of the appeal lodged by Mr Krejčíř against the decision of 19 December 2003 extending his detention, the Court observed that by not holding a hearing the Supreme Court had failed to allow the applicant to make oral submissions regarding factors essential to the assessment of the lawfulness of his detention, whereas the last hearing at which he had been able to make submissions had dated back several months earlier. It therefore considered that,

regarding the decisions of 20 September and 19 December 2003, the applicant had not had the benefit of a review by a court as required by Article 5 § 4 and held that there had been a violation of that Article.

The Court rejected the complaint based on Article 5 § 4 regarding the speediness of the proceedings on the ground that it was out of time. It also rejected the complaint lodged under Article 5 § 1 (c), as manifestly ill-founded.

- **Right to a fair trial**

Poppe v. the Netherlands (no. 32271/04) (Importance 2) – 24 March 2009 - No violation of Article 6 § 1 (fairness) – Impartiality of judges of first instance

In April 2000 the applicant was arrested on suspicion of various drug-related offences; he was ultimately convicted of facilitating drug trafficking and participating in a criminal organisation and sentenced to two years and ten months' imprisonment. Relying on Article 6 § 1, Mr Poppe complained that two of the judges of the first instance court that tried him had taken part in the trial of a number of his co-accused and had, in the judgments convicting them, found him to be connected with the criminal offences at issue. The Court found that fears which Mr Poppe could have experienced as regards bias on the part of the domestic court had not been objectively justified. In its view, the fact that a judge has already ruled on similar but unrelated criminal charges or that he or she has already tried a co-accused in separate criminal proceedings was not, in itself, sufficient to cast doubt on that judge's impartiality in a subsequent case. It was, however, a different matter if the earlier judgments contained findings that actually prejudged the question of the guilt of an accused in such subsequent proceedings.

As it was, in the judgments complained about the names of the applicant and others were mentioned in passing, merely to illustrate and clarify the leading role played in the criminal organisation by the applicant's co-accused. Whether the applicant's involvement with them fulfilled all the relevant criteria necessary to constitute a criminal offence and, if so, whether the applicant was guilty, beyond reasonable doubt, of having committed such an offence had not been addressed, determined or assessed by the trial judges in question. There had been no specific qualification of the involvement of the applicant or of acts committed by him, criminal or otherwise. The Court therefore held by six votes to one that there had been no violation of Article 6 § 1.

- **Freedom of religion**

Lang v. Austria (no. 28648/03) (Importance 2) – 19 March 2009 - Violation of Article 14 in conjunction with Article 9 - Austrian Military Service Act considered as discriminatory towards a Jehovah's Witness

The applicant is a Jehovah's Witness and is an elder (*Ältester*) for the community which involves providing pastoral care, leading church services and preaching. Relying in particular on Articles 4 (prohibition of forced labour), 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination) of the Convention, he complained that he had not been exempt from military service, unlike members of other recognised religious societies holding comparable religious functions. The Court considered the Austrian Military Service Act discriminatory and held, by six votes to one, that, as a result of the application of that Act, Mr Lang had not been exempt from military service, in violation of Article 14 in conjunction with Article 9.

2. Other judgments issued in the period under observation

You will find in the column "Key Words" of the table below a short description of the topics dealt with in the judgment*. For a more complete information, please refer to the following link:

- press release by the Registrar concerning the Chamber judgments issued on 19 March 2009 : [here](#).

* The "Key Words" in the various tables of the RSIF are elaborated under the sole responsibility of the Co-operation with National Human Rights Structures Unit of the DG-HL and the Office of the Commissioner for Human Rights

- press release by the Registrar concerning the Chamber judgments issued on 24 March 2009 : [here](#).
- press release by the Registrar concerning the Chamber judgments issued on 26 March 2009 : [here](#).

We kindly invite you to click on the corresponding link to access to the full judgment of the Court for more details. Some judgments are only available in French.

State	Date	Case Title and Importance of the case	Conclusion	Key Words	Link to the case
Bulgaria	26 Mar. 2009	Valentin Ivanov (no. 76942/01) Imp. 3.	Violation of Article 6 § 1 (length) Violation of Article 13	Excessive length of criminal proceedings (eight years and two months) No remedy existed at the time in domestic law that could have prevented the excessive length of the proceedings or provided adequate redress for it	Link
Denmark	26 Mar. 2009	Valentin (no. 26461/06) Imp. 3.	Violation of Article 6 § 1 (length) Violation of Article 13 Violation of Article 1 of Protocol No. 1	Excessive length (17 years and four months) of bankruptcy proceedings Lack of effective remedy The applicant has been deprived of the possibility to administer his assets for more than 17 years	Link
Romania	24 Mar. 2009	Nițescu (no. 26004/03) Imp. 2.	Violation of Article 6 § 1 (fairness)	Deprivation of the applicant's right to access to a court (failure to enforce a final judicial decision given in 2002 ordering the setting-aside of two administrative permits authorising the reconversion for commercial use of part of the building in which the applicant was living)	Link
Romania	24 Mar. 2009	Tudor Tudor (no. 21911/03) Imp. 2.	Violation of Article 6 § 1 (fairness)	Unfairness of proceedings against the applicant for recovery of possession of an apartment that he had bought from the State (because seven years after the adoption of the relevant domestic law, its interpretation by the Romanian courts was still subject to change and created continual uncertainty)	Link
Russia	19 Mar. 2009	Lyubimenko (no. 6270/06) Imp. 2	Violation of Article 3 (treatment) Violation of Article 5 § 3	Conditions of detention in overcrowded cells Excessive length of detention in custody on suspicion of aggravated murder and harbouring criminals (more than five years and seven months)	Link
Russia	19 Mar. 2009	Shkilev (no. 13541/06) Imp. 3.	Violation of Article 5 § 3	Excessive length of pre-trial detention on suspicion of aggravated murder (more than five years and ten months)	Link
Russia	19 Mar. 2009	Polonskiy (no. 30033/05) Imp. 2	Violations of Article 3 (torture and investigation) Violation of Article 5 § 3 Violation of Article 6	Torture of the applicant by the police by electric-shock and ineffectiveness of the investigation into his allegations of ill-treatment. Excessive length (more than five	Link

			§ 1 (length)	years and ten months) of detention pending trial Excessive length (more than five years and ten months) of criminal proceedings	
Russia	26 Mar. 2009	Yelizarov (no. 36551/07) Imp. 3.	Violation of Article 5 § 3	Excessive length of the applicant's detention pending trial (one year) on charges of mass disorders, assault and battery	Link

3. Repetitive cases

The judgments listed below are based on a classification which figures in the Registry's press release: "*In which the Court has reached the same findings as in similar cases raising the same issues under the Convention*".

The role of the NHRs may be of particular importance in this respect: they could check whether the circumstances which led to the said repetitive cases have changed or whether the necessary execution measures have been adopted.

<u>State</u>	<u>Date</u>	<u>Case Title</u>	<u>Conclusion</u>	<u>Key words</u>
Albania	24 Mar. 2009	Vrioni and Others (no. 2141/03) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Quashing of the Supreme Court's final judgment concerning restitution of property and given in the applicants' favour
Romania	24 Mar. 2009	Marinescu and Mangu (no. 26094/03) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Failure of the authorities to enforce a final judgment in favour of the applicants in good time
Russia	26 Mar. 2009	Nikolenko v. (no. 38103/04) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1 Violation of Article 13	Quashing of a final judgment by way of supervisory review in favour of the applicant
Turkey	24 Mar. 2009	Hasırcı (no. 38012/03) link	Violation of Article 6 § 1 (fairness)	Failure of the authorities to send the applicant the submissions of State Counsel at the State Administrative Court beforehand
Turkey	24 Mar. 2009	Mehmet Emin Şahin (no. 6124/02) link	Violation of Article 1 of Protocol No. 1	Delay in paying the compensation awarded to the applicant by a court decision

4. Length of proceedings cases

The judgments listed below are based on a classification which figures in the Registry's press release.

The role of the NHRs may be of particular relevance in that respect as well, as these judgments often reveal systemic defects, which the NHRs may be able to fix with the competent national authorities.

With respect to the length of non criminal proceedings cases, the reasonableness of the length of proceedings is assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (See for instance [Cocchiarella v. Italy](#) [GC], no. 64886/01, § 68, published in ECHR 2006, and [Frydlender v. France](#) [GC], no. 30979/96, § 43, ECHR 2000-VII).

<u>State</u>	<u>Date</u>	<u>Case Title</u>	<u>Link to the judgment</u>
Bulgaria	26 Mar. 2009	Petko Ivanov (no. 19207/04)	Link
Croatia	26 Mar. 2009	Medić (no. 49916/07)	Link
Finland	24 Mar. 2009	Vienonen and Others (no. 36989/05)	Link
Germany	26 Mar. 2009	Deiwick (no. 7369/04)	Link
Germany	26 Mar. 2009	Vaas (no. 20271/05)	Link
Hungary	24 Mar. 2009	Czifra (no. 13290/05)	Link
Hungary	24 Mar. 2009	Katona (no. 20075/05)	Link
Hungary	24 Mar. 2009	Pátková (no. 41453/05)	Link
Poland	24 Mar. 2009	Dorota and Zbigniew Nowak (no. 17904/04)	Link

B. The decisions on admissibility / inadmissibility / striking out of the list including due to friendly settlements

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 23 February to 8 March 2009.**

They are aimed at providing the NHRs with potentially useful information on the reasons of the inadmissibility of certain applications addressed to the Court and/or on the friendly settlements reached.

<u>State</u>	<u>Date</u>	<u>Case Title</u>	<u>Alleged violations (Key Words)</u>	<u>Decision</u>
Armenia	03 Mar. 2009	Hakobyan and Amirkhanyan (no 14156/07) link	The applicants complain about violations of Art. 6, Art. 13 and Art 1 of Prot. 1 on account of the unfairness of proceedings, of having been denied access to the Court of Cassation, and on account of an unlawful deprivation of properties (due to an inadequate amount of compensation awarded)	Partly adjourned (concerning the lack of access to the Court of Cassation; the lawfulness of the Court of Cassation's composition; the deprivation of property; the first applicant's complaint concerning the lack of equality of arms; and the second applicant's complaint concerning the lack of a fair hearing) Partly inadmissible as manifestly ill-founded concerning the remainder of the application
Armenia	03 Mar. 2009	Grigoryan and Others (no 40864/06) link	Alleged violations of Art. 6 and 13 (lack of an effective remedy because the civil procedure rules precluded the applicants from challenging before the courts the lawfulness of Governmental and Presidential decrees related to the expropriation projects, namely Decree no. 1151-N of 1 August 2002 and Decree no. 1047-N of 8 July 2004). The applicants complain about further violations of Art. 6 (unfairness of proceedings, deprivation of the right to access to the Court of Cassation), of Art. 8 (the District Court unlawfully authorised a forced entry into the applicants' flat for valuation purposes), of Art. 13 (no effective remedies in respect of these complaints), and of Art. 3 and Art. 1 of Prot. No. 1 (unlawful deprivation of property)	Partly adjourned concerning the lack of access to a court and the second and the fifth applicants' complaints concerning the lack of equality of arms, the failure of the Civil Court of Appeal to address an argument regarding one of the applicants and the deprivation of their property Inadmissible concerning the remainder of the application
Bulgaria	03 Mar. 2009	Dzhagarova and Others (no 5191/05) link	The applicants complain <i>inter alia</i> under Art. 6 § 1 on account of the excessive length of civil proceedings and under Art. 1 of Prot. 1 concerning the arbitrary deprivation of their properties	Partly adjourned (concerning the length of proceedings) and partly inadmissible as manifestly ill-founded (in particular because the interference with the applicants' property rights was not

Bulgaria	03 Mar. 2009	Bozhidar Petrov (no 72912/01) link	Relying on Art. 1 of Prot. No. 1 and Art. 6, the applicant complains that he had been arbitrarily deprived of the property of an apartment his parents had bought from the State in 1969	disproportionate) Struck out of the list (the applicant may be regarded as no longer wishing to pursue his application)
Bulgaria	03 Mar. 2009	Alexander Petrov (II) (no 40230/03) link	The applicant complains that a set of civil proceedings concerning the restitution of real estate expropriated from his parents had lasted an unreasonable length of time	Struck out of the list (the applicant may be regarded as no longer wishing to pursue his application)
Bulgaria	03 Mar. 2009	Kiskinov (no 36051/03) link	The applicant complains about the excessive length of criminal proceedings against him	Struck out of the list (friendly settlement reached)
Bulgaria	03 Mar. 2009	Vladislav Atanasov (no 20309/02) link	The applicant complains about a violation of Art. 3 (ill-treatment during his arrest and while in custody) as well as violations of Art. 3 (lack of effective investigation) and Art. 5 and 13 . The applicant further alleges violations of Art. 6 (lack of information provided to the applicant during the investigation of the case ; unfairness of the investigations)	Inadmissible for non-exhaustion of domestic remedies (concerning the allegations of ill-treatment and the lack of effective investigation) and as manifestly ill-founded (concerning the fairness of the investigation)
Bulgaria	03 Mar. 2009	Georgi Iliev (no 3916/04) link	The applicant complains under Art. 1 of Prot. 1 about the unlawful deprivation of the applicant's property bought before the law on restitution came into force	Struck out of the list (the applicant may be regarded as no longer wishing to pursue his application)
Croatia	05 Mar. 2009	Dejdar (no 22393/06) link	The applicant complains under Art. 3 about the conditions of his eviction from a flat, considering in particular the applicant's poor health. He further complains under Art. 6 § 1 and Art. 13 that the enforcement proceedings had been unfair and that he had no effective remedy in that respect.	Inadmissible as manifestly ill-founded. The Court finds that the eviction from the flat did not reach the level of severity so as to fall within the scope of Art. 3. The Court further notes that the complaint concerning the alleged unfairness of the enforcement proceedings is entirely unsubstantiated and, there is no arguable claim for the purposes of Art. 13.
Cyprus	05 Mar. 2009	Papachrist oforou and Others (no 11597/07) link	The applicants complain under Art. 6 and 13 about the protracted length of the proceedings and the lack of an effective remedy in this respect.	Struck out of the list (friendly settlement reached)
Czech Republic	03 Mar. 2009	Knebl (no 20157/05) link	Relying on Art. 5 §§ 1 c), 3, 4 and 6 §§ 1, 2, the applicant complains about the unlawfulness and the length of his detention. He complains about further violations of Art. 5 §§ 3 and 4 and of Art. 6 §§ 1, 2, 3 a), b), d) and e) about the unfairness of criminal proceedings	Partly adjourned (concerning the length of pre-trial detention and concerning the possibility to challenge the lawfulness of the detention) Partly inadmissible for non exhaustion of domestic remedies (concerning in particular the unlawfulness of the detention) and as manifestly ill-founded (concerning the fairness of criminal proceedings)
Czech Republic	03 Mar. 2009	Lajda and Others (no 20984/05) link	Alleged violations of Art. 6 (excessive length of the registration proceedings for a church, the <i>Společenství Duchy Svatého pro sjednocení světového křesťanství</i> ; and unfairness of proceedings), of Art. 9, of Art. 11, and of Art. 14 (discrimination on grounds of religion)	Inadmissible partly for non-exhaustion of domestic remedies (concerning the excessive length and unfairness of proceedings as well as concerning the alleged discrimination) and partly as manifestly ill-founded (no appearance of violation of Art 9 and 11)
Czech Republic	03 Mar. 2009	Najvar (no 8302/06) link	Alleged violation of Art. 6 § 1 (length of civil proceedings) The applicant further complains under Art. 1 of Prot. 1 that the domestic courts' decisions will cause the loss of the applicant's property	Inadmissible, partly because the applicant cannot claim the status of victim (an adequate compensation has been afforded at domestic level concerning the excessive length of civil proceedings), partly for non-exhaustion of domestic remedies (concerning the allegations of violation of the applicant's right to property)

Denmark	03 Mar. 2009	Hysena Bajramaj (no 40125/06) link	The applicant complained that the authorities' refusal to grant her a residence permit in Denmark and her deportation contravened Art. 3, 6 and 8	Struck out of the list (it is no longer justified to continue the examination of the application as the applicant voluntarily returned to Kosovo)
Poland	03 Mar. 2009	Izydorczak (no 35488/08) link	The applicant complains under Art. 6 § 1 about the excessive length of proceedings. He also complained about the amount of just satisfaction, which he received for the breach of the "reasonable time" requirement laid down in Article 6.	Struck out of the list (friendly settlement reached)
Poland	03 Mar. 2009	Lojewski (no 56344/07) link	The applicant complains about the excessive length of the proceedings and about not having been granted any compensation for the protracted length of the proceedings.	Struck out of the list (friendly settlement reached)
Poland	03 Mar. 2009	Kindzierski (no 19054/03) link	Alleged violations of Art. 3 (inadequate conditions and medical care in Lublin Remand Centre and Chełm Prison), of Art. 5 § 3 (unreasonable length of pre-trial detention), Art. 6 § 1 (incorrect classification of charges and unreasonable length of criminal proceedings), Art. 8 (revocation of registration of the applicant's flat and two of the applicant's letters have been checked by the staff of Lublin Remand Centre and the judicial authorities)	Struck out of the list (the applicant may be regarded as no longer wishing to pursue his application)
Romania	03 Mar. 2009	Costescu (no 13636/02) link	The applicants complain under Art. 6 § 1 about the unfairness of proceedings against them. They also complain that the final decision of domestic courts had infringed their property right and that no compensation had been awarded to them for this interference.	Inadmissible as partly manifestly ill-founded (concerning the unfairness of proceedings against the applicants), partly for non-exhaustion of domestic remedies (concerning the interference with the right to property)
Russia	05 Mar. 2009	Adrienko (no 23561/06) link	The applicant complains under Art. 6 § 1 and Art. 1 of Prot. no 1, about the failure of the authorities to execute a decision in the applicant's favour in good time.	Struck out of the list (friendly settlement reached)
Russia	05 Mar. 2009	Golik and Golik (no 23554/06) link	Idem.	Idem.
Russia	05 Mar. 2009	Kosterina (no 26467/05) link	Idem.	Idem.
Russia	05 Mar. 2009	Loukina (no 28940/05) link	Idem.	Idem.
Russia	05 Mar. 2009	Radjabli (no 4246/05) link	Idem.	Idem.
Russia	05 Mar. 2009	Sasita israilova and others (no 35079/04) link	Alleged violations <i>inter alia</i> of Art 2 and 3 due to the fact that the applicants' relatives, who were living in the Chechen Republic, had been ill-treated in custody and killed by representatives of the federal forces. The applicants also complain about the unlawful detention of their relatives and violations of their right to family life, and about further violations of Art. 13, Art. 14, and Art 38 § 1 (a) (about the Government's refusal to submit a copy of the file of the investigations)	Partly admissible concerning the complaints under the articles 2, 5, 13 and Art. 3 (with respect to the applicants' mental suffering), Partly struck out of the list (the applicants are no longer wishing to pursue their application concerning the alleged ill-treatment of their relatives and under Articles 8 and 14) Partly inadmissible (concerning the remainder of the application)

* "All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo."

Russia	05 Mar. 2009	Tigran Ayrapetyan (no 75472/01) link	The applicant complains under Article 3 that he had been ill-treated by police officers of the Otradnoe District Police Station of Moscow during his detention. The applicant further complains under Art. 13 about the lack of effective investigation in that respect	Admissible
Slovakia	03 Mar. 2009	Mazurek (no 16970/05) link	The applicant complain under Art. 6 § 1 about the length of proceedings before the District Court in Poprad	Inadmissible for non-exhaustion of domestic remedies
Slovenia	03 Mar. 2009	Trnovsek (no 6685/03) link	The applicant complains under Art. 6 § 1 about the excessive length of civil proceedings and under Art. 13 about the lack of an effective domestic remedy	Struck out of the list (friendly settlement reached)
Slovenia	03 Mar. 2009	Lamprecht And 5 others (nos 8327/06; 17007/06; 17021/06; 17048/06; 18041/06; 18285/06) link	The applicants complain under Art. 6 § 1 about the excessive length of civil proceedings. They further complain under Art. 13 about the lack of an effective domestic remedy in this regard.	Struck out of the list (following the settlements reached between the parties the matter has been resolved at domestic level and the applicants do not wish to pursue their applications)
The Netherlands	03 Mar. 2009	Voorhuis (no 28692/06) link	The applicant complains under Art. 6 § 1, 8 and 13 about the length and fairness of the proceedings; about the suffering the length of the proceedings had caused to her private and family life; and about the lack of an effective remedy in this respect.	Partly struck out of the list (following the unilateral declaration of the government concerning the length of proceedings and the lack of effective remedy) Partly inadmissible as manifestly ill-founded (concerning the alleged violation of right to private and family life)
Turkey	03 Mar. 2009	Askin (no 36147/04) link	The applicant complains under Art. 6 § 1 and 5 § 3 about the length of his pre-trial detention and the length of criminal proceedings	Struck out of the list (friendly settlement reached)
Turkey	03 Mar. 2009	Ozmen (no 4545/05) link	The applicant complains under Art. 6 § 1 about the length of administrative proceedings. Under Art. 13, the applicant claims that the domestic courts erred in their assessment of the facts, which deprived him of his right to have an effective remedy before domestic law. The applicant further complains under Art. 9 and Art. 14 that the remark in his appraisal record concerning his alleged weakness for women and the negative outcome of the ensuing domestic proceedings were based on his conversion to Christianity.	Partly adjourned (concerning the length of administrative proceedings) Partly inadmissible as manifestly ill-founded and for non-exhaustion of domestic remedies (concerning the remainder of the application)
Turkey	03 Mar. 2009	Tirindaz (no 73785/01) link	The applicant complains under Art. 5 § 3 about the excessive length of his pre-trial detention (five years and six months)	Struck out of the list (the applicant may be regarded as no longer wishing to pursue his application)

C. The communicated cases

The European Court of Human Rights publishes on a weekly basis a list of the communicated cases on its Website. These are cases concerning individual applications which are pending before the Court. They are communicated by the Court to the respondent State's Government with a statement of facts, the applicant's complaints and the questions put by the Court to the Government concerned. The decision to communicate a case lies with one of the Court's Chamber which is in charge of the case.

There is in general a gap of three weeks between the date of the communication and the date of the publication of the batch on the Website. Below you will find the links to the lists of the weekly communicated cases which were published on the Court's Website :

- on 30 March 2009 : [link](#)
- on 6 April 2009 : [Link](#)

The list itself contains links to the statement of facts and the questions to the parties. This is a tool for NHRSs to be aware of issues involving their countries but also of other issues brought before the Court which may reveal structural problems. Below you will find a list of cases of particular interest identified by the NHRS Unit and the Head of the Legal Advice Unit of the Office of the Commissioner for Human Rights.

NB. The statements of facts and complaints have been prepared by the Registry (solely in one of the official languages) on the basis of the applicant's submissions. The Court cannot be held responsible for the veracity of the information contained therein.

Please note that the Irish Human Rights Commission (IHRC) issues a monthly table on priority cases before the European Court of Human Rights with a focus on asylum/ immigration, data protection, anti-terrorism/ rule of law and disability cases for the attention of the European Group of NHRIs with a view to suggesting possible amicus curiae cases to the members of the Group. Des Hogan from the IHRC can provide you with these tables (dhogan@ihrc.ie).

Communicated cases published on 30 March 2009 on the Court's Website and selected by the NHRS Unit and the Office of the Commissioner for Human Rights

<u>State</u>	<u>Date of communication</u>	<u>Case Title</u>	<u>Key Words</u>
Azerbaijan	09 Mar. 2009	Gasimov no. 20889/05	The applicant was the head of the Shaki branch of the National Independence Party of Azerbaijan. During the demonstrations, following the parliamentary elections of 5 November 2000, the applicant was arrested and sentenced to six year imprisonment by the judgement of the Assize Court. On 25 October 2001 the Court of Appeal upheld the Assize Court's judgment. The applicant alleges he was not provided with a copy of this judgment. In 2003, the applicant lodged a cassation appeal against the latter judgment. The Supreme Court refused to admit his cassation appeal because he did not have a copy of the disputed judgment. After receipt of a copy of the Court of Appeal's judgment, on 16 August 2003 the applicant lodged a new cassation appeal with the Supreme Court. At the time of the latest communication with the applicant, the cassation appeal remained unexamined. The applicant complains under Art. 6 about the violation of his right to a fair trial, because his cassation appeal had never been examined. He also complains about the deprivation of his right to have his conviction or sentence reviewed by a higher tribunal.
Azerbaijan	09 Mar. 2009	Seydiyev no. 13648/06	The applicant is sentenced to one and half years' imprisonment in particular for use of violence against police officers. The applicant complains under Art. 6 that he had not been informed of the date and venue of the hearing before the Supreme Court. The applicant further complains : about the lack of effective free legal assistance ; that the domestic courts had not examined witnesses on his behalf under the same conditions as witnesses against him ; and about further violations of Art. 6.
Bulgaria	11 Mar. 2009	Pantusheva and 32 other cases No. 40179/04; 40092/04;	Following the adoption of the Religious Denominations Act 2002, which entered into force on 1 January 2003, the activities of the "alternative leadership" supported by the applicants were suppressed. On 21 July 2004, during a massive police operation the applicants were evicted from all churches, monasteries and administrative premises that they controlled. The applicants complain, relying on Articles 9 and 13 of the Convention and Article 1 of Protocol

		40176/04; 40047/04; etc...	No. 1 that they had been the victims of an unlawful and arbitrary State interference with internal affairs of the Church, that they had been deprived of property and that they did not have effective remedies. Some of the applicants also complain under Art. 6 about having been deprived of access to court in relation to the actions of the prosecuting authorities. The facts of these cases are described in detail in the Court's decision on admissibility in the case of <i>Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria</i> ((dec.), nos. 412/03 and 35677/04, 22 May 2007).
Finland	13 Mar. 2009	Rangdell no. 23172/08	The applicant complains under Article 6 § 1 of the Convention about the length of proceedings. He further complains under that Article that in order to bring a case against the insurance association he was obliged to lodge a case with the Average Adjuster, which was not an independent and impartial tribunal established by law.
France	09 Mar. 2009	Couderc and Hachette Filipacchi Associes no 40454/07	The applicants complain under Art. 10 that the interference of the State in their activities (due to their conviction following the publication of an article about the so-called "hidden" son of M. Albert Grimaldi, prince of Monaco) has violated their right to freedom of expression. They rely in particular on the interest of the public in being informed of certain aspects of the private life of public personalities.
Georgia	11 Mar. 2009	Kvarelachvili no 28987/08	The applicant complains under Art. 3, about the conditions of detention, in particular concerning the lack of appropriate medical treatment in prison and overcrowding in prisons n°1 and n°5 in Tbilissi and Prison n°6 in Roustavi. The applicant further complains under Art. 5 §§ 1 and 3 that the decisions of domestic courts about his detention have not been based on sufficient and adequate motives. He also claims to be victim of a violation of Art. 5§2, on account of not having been informed of the reasons of his arrest. The applicant claims to be a victim of further violations of Art. 6, Art. 8, Art. 10, Art. 14, and Art. 34.
Greece	13 Mar. 2009	Popovitsi no 53451/07	Relying on Art. 6 §§ 1, 2 and 3, the applicant complains about the excessive use of the notification to parties with unknown addresses resulting in the conviction of the applicant <i>in absentia</i> and in unfair proceedings. The applicant further claims under Art. 2 of Prot. 7 that she has been deprived of her right to have a conviction or sentence reviewed by a higher tribunal.
Greece	13 Mar. 2009	Rahimi no 8687/08	The applicant, unaccompanied minor of Afghan origin alleges <i>inter alia</i> that there was a violation of Article 3 on account of his conditions of detention in Lesbos (detained with adults), lack of legal assistance; of Article 5 (inter alia, lack of information about the reasons of his arrest /detention with a view to expulsion; no possibility to take proceedings against detention). The applicant refers to the Greek Ombudsman's and NGOs' findings regarding the current practice of the Greek police to mention in the expulsion order of an adult that the latter accompanies a minor.
Poland	12 Mar. 2009	Mościcki no. 52443/07	The applicant complains under Art. 6 about the unfairness of the proceedings and their outcome. He also claims that the Commissioner of Public Interest refused to call advocates as witnesses for the applicant. He also alleges that the lustration courts refused to hear a number of his witnesses who were to establish that he had not been a secret and conscious collaborator of the security service. The applicant further alleges that in the lustration proceedings he had restricted access to the classified documents in the case-file. He also complains that as a result of the lustration proceedings he was deprived of the right to practise as an advocate for 10 years and accordingly sustained significant moral and pecuniary damage. Lastly, the applicant complains that the constitutional principle that a case should be examined by two judicial instances was violated in the lustration proceedings.
Poland	09 Mar. 2009	Kupczak no. 2627/09	The applicant complains under Art. 3 about the conditions of his pre-trial detention, the length of his detention, the lack of medical remedy (in particular concerning the failure to provide the applicant with a morphine pump) and lack of physical re-education in the detention centre. The applicant complains that he is unable to effectively and consciously participate in his trial.
Poland	09 Mar. 2009	Milczak no. 11717/02	The applicant complains under Article 3 about the conditions of his detention in Łódź Remand Centre and inadequate medical care. He also complains under Art. 5 § 3 about the length of his pre-trial detention and under Art. 6 about the outcome of criminal proceedings against him
Portugal	09 Mar. 2009	Público – Comunicação Social, S.A. and others no 39324/07	The applicants complain under Art. 10, that their condemnation due to an article published in a journal (concerning the debts of a Portugese football club towards the tax authorities) has violated their right to freedom of expression.
Russia	11 Mar. 2009	Sopot no. 4575/07	The applicant complains under Art. 2, 3 and 6 that the domestic courts ignored his complaint about the lack of medical assistance during pre-trial detention. The applicant further complains under Art. 6 and 13 that the proceedings concerning his application for release were unfair.

Russia	09 Mar. 2009	Ivan Korolev N° 40052/05	The applicant, a member of the National Bolsheviks Party, complained under Article 5 § 3 of the Convention alone and in conjunction Article 14 that his detention had been too long and the detention orders had not been grounded on sufficient reasons. His detention and prosecution had been politically motivated and he had been discriminated against on account of his political views.
Russia	09 Mar. 2009	Konovalova N° 40052/05	Under Article 2 of the Convention the applicant complains that the childbirth operation which was held in public at the Hospital of the Military Medical Academy without her explicit approval threatened her and her child's life and health. The applicant complains under Articles 3, 4, 5 and 8 of the Convention that she did not give her consent to the public operation and that she was <i>de facto</i> detained by the authorities as she allegedly could not leave. Under Article 14 of the Convention the applicant also alleges discrimination on the basis of her gender.
Russia	09 Mar. 2009	Ooo Ivpress And Others N° 35618/05	The applicants (who published a series of articles which criticised the management of the Ivanovo Regional Social Security Fund by its director) complain under Article 10 of the Convention that the judgments of the domestic courts unduly restricted their right to freedom of expression.
Russia	09 Mar. 2009	Ratkin N° 24625/05	The applicant complained under Article 6 §§ 1, 2 and 3 that his right to be presumed innocent had been breached by a hostile press campaign inspired by the authorities. He further complained that his exclusion from the hearing room had deprived him of an opportunity to have knowledge of and comment on the evidence adduced by the prosecution, to question the co-defendants and witnesses and to make submissions in defence of his position. He alleges further violations of Art. 6 and of Art. 13.
Russia	09 Mar. 2009	Yezhov And Others N° 22051/05	The applicants complain under Articles 5 § 1 and 18 of the Convention that their arrest and detention was unlawful. The real reason behind their arrest was their membership of an opposition organisation, the National Bolsheviks Party. The applicants complain under Articles 9, 10 and 11 of the Convention that that they were prosecuted and convicted for their participation in a peaceful protest against the liquidation of social benefits. The applicants further complain about violations of Art. 3, 6 and 14.
Switzerland	12 Mar. 2009	Kamaco N° 21010/08	The applicant alleges that his deportation to Sierra-Leone or Nigeria would constitute a violation of Article 3 due to his poor health
Switzerland	12 Mar. 2009	Nada 10593/08	Relying on Articles 3, 5, 8, 9 and 13, the applicant complains about the prohibition to enter Switzerland (or to transit through Switzerland) due to the registration of his name on a list of the UN Security Council established pursuant to the Resolutions 1267 (1999) ; 1333 (2000) ; and 1730 (2006) (concerning sanctions against Talibans or members of Al-Qaeda)
Turkey	10 Mar. 2009	Ozturk N° 24874/04	The applicant is the owner of "Yurt Books and Publishing", a small independent firm that has published numerous books in Turkey. In the 1990s a number of books published by the applicant's company were found to contain propaganda in breach of various provisions of the Prevention of Terrorism Act (Law no. 3712), as well as "insults to the memory of Atatürk" in breach of Law no. 5816. He was convicted and served a total period of one year, five months and twenty days in prison and paid the equivalent of 5,121 euros (EUR) in fines. Most of the books in question were confiscated. The applicant complains under Article 10 that there has been an unjustified interference with his right to freedom of expression on account of, <i>inter alia</i> , the national courts' failure to state by which laws the continued confiscation was justified. The applicant invokes as well a violation of Art. 1 of Prot. No.1.
Turkey	9 Mar. 2009	Elici N° 39255/05	The applicant complains about violations of Art. 6 (concerning in particular the presumption of innocence and the impossibility to question witnesses before the assize court)
Ukraine	12 Mar. 2009	Krivova N° 25732/05	The applicant's daughter was among the pupils who visited a cinema. As a result of lack of control of entry to the auditorium during the film, there was a stampede and four children were trampled to death; fourteen children, including the applicant's daughter, received varying degrees of injury. The applicant complains that the accident of 30 November 1998 violated her daughter's right to life guaranteed by Article 2 of the Convention. She further complains about the lack of effective investigation and about the excessive length of proceedings.
Ukraine	10 Mar. 2009	Lotarev N° 29447/04	Relying on Articles 1, 2, 3, 6, 9, 13, 17 and 34, the applicant complained : that he had been wrongly diagnosed with tuberculosis and subjected to forceful medical treatment for it against his religious convictions ; that he had been ill-treated by the staff of Zhytomyr Penitentiary no. 8 and that there had been no adequate investigation into the matter ; that the conditions of his detention in the aforementioned penitentiary were inadequate ; that the penitentiary's administration interfered with his correspondence and food parcels.
Ukraine	10 Mar. 2009	Polishchuk N° 12451/04	The applicants complain that their flat had been searched in breach of Article 8 of the Convention, and about further violations of Art. 6.

Cases concerning Chechnya and Ingushetia

Russia	11 Mar. 2009	Velkhiyev and Others no. 34085/06	The applicants, living in Ingushetia, complained under Art. 2 and 3 that Mr Bashir Velkhiyev had been killed under torture by State agents and that there had been no adequate investigation into his death. The applicants further complained under Art. 5 about unlawful deprivation of liberty of the first applicant and Mr Bashir Velkhiyev. The applicants also complained under Art. 8 that unlawful deprivation of liberty and subsequent death of Mr Bashir Velkhiyev constituted a violation of their right to respect for private and family life. The applicants also relied on Art 8 and Art. 1 of Prot. No. 1 complaining about unlawfulness of the search conducted at their home on 20 July 2004. The applicants complained under Art. 13 that they had no effective domestic remedies in respect of the above alleged violations.
Russia	09 Mar. 2009	Akhmatkhanova and Others no. 20147/07	The applicants living in Chechnya complain under Art. 2 that their relative Artur Akhmatkhanov was killed by Russian servicemen and that Russia has not complied with its positive obligation to protect the life of their relative. Under Art. 3 the applicants complain that they have suffered anguish and distress following their relative's disappearance and the lack of an adequate response on the part of the authorities. The applicants further complain about violations of Art. 5 and 13.
Russia	09 Mar. 2009	Chilayev And Dzhabayeva N° 27926/06	The applicants, living in Chechnya, submit that the apprehension of their sons and the absence of any news from them thereafter give rise to a strong presumption that they were killed by servicemen, in violation of Article 2 of the Convention. They further submit that the authorities failed to conduct a timely and thorough investigation into the disappearance, in violation of the procedural obligation under Article 2 of the Convention. They allege further violation of Art. 3, 5 and 13.
Russia	09 Mar. 2009	Isayeva and others N° 6371/09	The applicants residing in Chechnya complain under Article 2 about the violation of the right to life of their relative and submit that the circumstances of his arrest and his ensuing disappearance indicate that he was killed by the federal forces. The applicants further complain that no effective investigation was conducted into his disappearance and allege further violations of Art. 3, 5 and 13.
Russia	09 Mar. 2009	Matayeva and Dadayeva	The applicants living in the Chechen Republic complain under Article 2 about a violation of the right to life in respect of their relative. They submit that the circumstances of his disappearance and the long period during which his whereabouts could not be established suggest that he had been killed by State agents. The applicants further complain about the lack of effective investigation and about further violations of Art. 3, 5 and 13.
Russia	09 Mar. 2009	Nasirkhayeva N° 1721/07	On ground in particular of Art. 2, the case concerns the death of the applicant's daughter following the bombardment by Russian federal troops of Grozny on 27 December 1999. The applicant complains under Article 13 that she has no effective domestic remedies in relation to her daughter's killing and further complains under Article 6 that the domestic court dismissed her non-pecuniary claims.
Russia	09 Mar. 2009	Sambiyeva N° 20205/07	The applicant living in Chechnya submits that the apprehension of her son and the absence of any news from him thereafter give rise to a strong presumption that he was killed by Russian servicemen, in violation of Article 2. She further submits that the authorities failed to conduct a timely and thorough investigation into his disappearance, in violation of the procedural obligation under Article 2 of the Convention. She also complains under Article 2 that Russia has not complied with its positive obligation to protect the life of her son and alleges further violations of Art. 3, 5 and 13.
Russia	09 Mar. 2009	Tashukhadzhiyev N° 33251/04	Referring to Articles 5, 13 and 14 of the Convention the applicant complains about unlawfulness of his son's detention on 9 February 1996 by Russian federal servicemen, his subsequent disappearance and possible killing and the failure of the domestic authorities to conduct an effective investigation into the events. Under Article 6 the applicant alleges that the absence of the results of the criminal investigation prevents him from lodging a civil claim for compensation.
Russia	09 Mar. 2009	Vadilova and others N° 6382/09	The applicants living in Chechnya complain under Article 2 about the violation of the right to life of their relative and submit that the circumstances of his arrest and his ensuing disappearance indicate that he was killed by the federal forces. The applicants further complain that no effective investigation was conducted into his disappearance and allege further violations of Art. 3, 5 and 13.

Communicated cases published on 30 March 2009 on the Court's Website and selected by the NHRS Unit and the Office of the Commissioner for Human Rights

<u>State</u>	<u>Date of communication</u>	<u>Case Title</u>	<u>Key Words</u>
Austria	20 Mar. 2009	Standard Verlags GMBH N° 34702/07	The applicant is the owner of the daily newspaper <i>Der Standard</i> . In its issue of 4 April 2006, in the economics section, the applicant published an article dealing with the investigations into losses incurred by the Hypo Alpe-Adria. The applicant complains under Article 10 of the Convention that the Vienna Court of Appeal's judgment of 14 February 2007 (ordering the applicant to pay 5,000 euros (EUR) in compensation to the claimant and to reimburse his procedural costs) violated its right to freedom of expression. It submits in particular that the interference with that right was not necessary.
Bulgaria	19 Mar. 2009	Lyubenova N° 13786/04	The case concerns alleged violations of Art. 6, 8 and 14 following the suspension of a judgment depriving the applicant of the possibility to live with her child.
Croatia	16 Mar. 2009	Balenovic N° 28369/07	The applicant complains under Articles 9 and 10 that her dismissal from work on account of her statements to the press and the subsequent refusal of the domestic courts to reinstate her infringed her freedom of thought and freedom of expression. She further complains about violations of Art. 6, taken alone and in conjunction with Art. 14.
France	16 Mar. 2009	Poirot N° 29938/07	Alleged violation of Art. 6 following the dismissal of the applicant's appeal by the <i>chambre de l'instruction</i> due to an alleged excessive formalism
Georgia	20 Mar. 2009	Kitiashvili N° 37747/08	The applicant complains about his conditions of detention in Tbilissi prison n° 5 and Roustavi Prison n° 6. He further alleges violations of Articles 5, 6, 7 and 8 of the Convention.
Lithuania	17 Mar. 2009	Rainys N° 56213/08	Invoking Articles 8 and 14 of the Convention, the first and second applicants complain that they have been barred from employment in the private sector due to their status of "former permanent KGB employee". Whilst conceding the positive nature of the Supreme Administrative Court's decisions of 14 April 2008 and 18 April 2008 and the value of those decisions to the Lithuanian legal system, they claim that those decisions are directed towards the future and have been of no benefit to them, because in their case the violations of the Convention rights have continued since 27 October 2004, when the Strasbourg Court's judgment in their previous applications of <i>Sidabras and Džiautas v. Lithuania</i> became final. The first and second applicants further contend that the purported possibility of relying directly on the Court's judgment to defend their right to private employment is purely theoretical and therefore insufficient.
Lithuania	17 Mar. 2009	Sidabras and Džiautas N° 50421/08	Invoking Articles 8 and 14 of the Convention, the third applicant complains of a violation of a right to seek employment in the private sector. He notes that in his case the Court delivered its judgment on 7 April 2005. Although the judgment did not specify a deadline for amending the KGB Act, the period of three years [by now nearly four years] during which the State has failed to amend it was neither reasonable nor justified.
Romania	16 Mar. 2009	Ciobanu Fane N° 27240/03	The applicant relying on Art. 3 complains about his conditions of detention in Craiova, in Giurgiu and in Bucarest-Jilava. He further alleges that he was ill-treated in the penitentiary hospital of Rahova. He complains also about the lack of adequate medical treatment and about further violations of Art. 6, 8 and 1 of Prot. 1.
Russia	20 Mar. 2009	Filatov N° 22485/05	The applicant complained under Article 3 about having been ill-treated by policemen following his arrest. He complained under Article 6 § 3 (a) and (c) that he had not been provided with a copy of the bill of indictment and that he had not been provided with a legal aid counsel and about a further violation of Article 8.
Russia	20 Mar. 2009	Nadtoka N° 38010/05	At the material time the applicant was acting as the <i>pro bono</i> editor-in-chief of the newspaper which published an article relating the story of the local journalist Aleksey Fedorov who had been given a prison sentence for uncovering the financial irregularities allegedly committed by the town mayor. The applicant was sentenced to a fine of 50,000 Russian roubles (1,365 euros at the official exchange rate). The applicant complains about violations of Art. 6, 10 and 13.
Russia	16 Mar. 2009	Taranenko N° 19554/05	The applicant complained under Article 3 that she had been kicked in the face by the arresting officer and that she had been detained in inhuman conditions in detention facility no. IZ-77/6 in Moscow. She further complained about the lawfulness and length of her detention. She alleges under Article 10 that she had been convicted for public expression of her opinion about the President's politics and under Article 18 that her detention and prosecution had been politically motivated.
Serbia	20 Mar. 2009	Krivosej N° 42559/08	In the first case the applicant complains about: (i) the non-enforcement of the final access order of 7 October 2002; (ii) the absence of an effective domestic remedy in this respect; and (iii) being discriminated against on the bases of her Russian origin and/or her indigence. In the second case the complains about the non-enforcement of a final access order, as well as the absence of an effective
Serbia	20 Mar. 2009	Pesic N° 3759/08	

			domestic remedy in this respect. In both cases the Government are invited in particular to indicate whether the Constitutional Court has become fully operational and, if so, whether it has already ruled in respect of any constitutional appeals, including those alleging non-enforcement. The Government are also invited to inform the Court whether the Commission for Compensation has been set up and, if so, to provide copies of its decisions to date.
The United Kingdom	20 Mar. 2009	Iyisan N° 7673	The applicant, deported to Turkey on 7 January 2008, complains that his deportation violated his right to a private and family life under Article 8.
The United Kingdom	19 Mar. 2009	Kadirov N° 39214/07	The applicant complains that his forcible removal to Uzbekistan would be a breach of the United Kingdom's obligations under Articles 2, 3 and 6.
The United Kingdom	18 Mar. 2009	Yesufa N° 7347/08	The applicant, a Nigerian national, complains under Article 8 of that his deportation would violate his right to a private and family life.
Turkey	17 Mar. 2009	Turgay ; Dunsun (II); Dunsun (III); Dunsun and others (III); Dunsun and others (IV); Dunsun N° 29572/08 and al.	On various dates the Istanbul Assize Court decided to suspend the publication and distribution of newspapers related to the applicants for a period of one month on the basis of section 6(5) of the Prevention of Terrorism Act (Law no. 3713), mainly for containing propaganda in favour of the PKK (<i>the Kurdistan Workers' Party</i>). The applicants complain about violations of Art. 6 (no oral hearing, no presumption of innocence), of Art. 7 ("penalty" without a legal basis), of Art. 10 (unjustified interference with their freedom of expression), of Art. 13 and of Art. 1 of Prot. 1
Ukraine	17 Mar. 2009	Znaykin N° 37538/05	The applicant complains under Article 3 about the conditions of his detention in the Feodosiya ITU and the Simferopol SIZO. He complains about further violations of Art. 5 and Art. 6.
Ukraine	16 Mar. 2009	Ustyantsev N° 3299/05	The applicant complains about his conditions of detention in the Odessa Pre-Trial Detention Centre and about further violations of Art. 5 and 6.
<u>Cases concerning Chechnya</u>			
Russia	16 Mar. 2009	Dudarova and Dudarov N° 5382/07	The applicants, living in the Chechen Republic, complain under Article 2 about the violation of the right to life of their relative and claim that the circumstances of his arrest and ensuing disappearance suggest that he was killed by the federal forces. The applicants further complain that no effective investigation was conducted into his disappearance. They further allege violations of Art. 3, 5 and 13.
Russia	16 Mar. 2009	Khakiyeva and others N° 45081/06	The applicants living in Chechnya submit that the apprehension of their relative Lema Khakiyev and the absence of any news from him thereafter give rise to a strong presumption that he was killed by Russian servicemen, in violation of Article 2 of the Convention. They further submit that the authorities failed to conduct a timely and thorough investigation into his disappearance, in violation of the procedural obligation under Article 2 of the Convention. They also complain under Article 2 that Russia has not complied with its positive obligation to protect the life of Lema Khakiyev. They further allege violations of Art. 3, 5 and 13.

D. Miscellaneous (Referral to grand chamber, hearings and other activities)

Hearings (26.03.09)

In April 2009, the Court will be holding hearings in the cases of ***Oršuš and Others v. Croatia*** and ***Georgia v. Russia (No. 1)***. [Press Release](#) ; [Webcast of hearings](#).

Visit to Croatia (27.03.09)

From 27 to 30 March 2009 President Costa was on official visit to Croatia, accompanied by Nina Vajić, the judge elected in respect of Croatia, and Roderick Liddell, the Director of Common Services. On 27 March President Costa was received by Stjepan Mesić, the President of Croatia, Ivo Sanader, the Prime Minister, and Ivo Šimonović, the Minister of Justice. President Costa also met the judges of the Constitutional Court and the Supreme Court of Croatia. On 28 March President Costa was received by Mladen Bajić, the Principal Public Prosecutor of Croatia. On 30 March President Costa

met Leo Andreis, the President of the Croatian Bar Association, and gave a speech at the Law Faculty of Zagreb.

Visit to London (29.03.09)

On 23 March 2009 President Costa visited London, where he delivered a speech to the Honourable Society of the Inner Temple. [Speech](#) of President Costa

FNUJA/AIJA joint seminar (20.03.09)

On Friday 20 March 2009 President Costa opened a training seminar on the procedure before the European Court of Human Rights, organised jointly by the French National Federation of Young Lawyers' Unions (FNUJA) and the International Association of Young Lawyers (AIJA). The seminar took place in the Human Rights Building in Strasbourg. Judges Françoise Tulkens, Corneliu Bîrsan and Elisabet Fura-Sandström took also part.

[Link to programme of seminar](#)

Part II : The execution of the judgments of the Court

A. New information

17-19 March 2009: Committee of Ministers to supervise the execution of European Court of Human Rights judgments (16.03.09)

The Council of Europe's Committee of Ministers held its first special "human rights" meeting of 2009 from 17 to 19 March.

Relevant information was already provided in the RSIF n°12. You may now consult the annotated agenda with decisions:

- [CM/Del/OJ/DH\(2009\)1051genpublicE / 02 April 2009](#) 1051st meeting (DH), 17-19 March 2009 - Annotated Agenda - General questions - Public information version
- [CM/Del/OJ/DH\(2009\)1051section1publicE / 02 April 2009](#) 1051st meeting (DH), 17-19 March 2009 - Annotated Agenda - Decisions - Section 1 - Public information version
- [CM/Del/OJ/DH\(2009\)1051section2.1publicE / 02 April 2009](#) 1051st meeting (DH), 17-19 March 2009 - Annotated Agenda - Decisions - Section 2.1 - Public information version
- [CM/Del/OJ/DH\(2009\)1051section4.1publicE / 02 April 2009](#) 1051st meeting (DH), 17-19 March 2009 - Annotated Agenda - Decisions - Section 4.1 - Public information version
- [CM/Del/OJ/DH\(2009\)1051section4.2publicE / 02 April 2009](#) 1051st meeting (DH), 17-19 March 2009 - Annotated Agenda - Decisions - Section 4.2 - Public information version
- [CM/Del/OJ/DH\(2009\)1051section4.3publicE / 02 April 2009](#) 1051st meeting (DH), 17-19 March 2009 - Annotated Agenda - Decisions - Section 4.3 - Public information version
- [CM/Del/OJ/DH\(2009\)1051section5publicE / 02 April 2009](#) 1051st meeting (DH), 17-19 March 2009 - Annotated Agenda - Decisions - Section 5 - Public information version
- [CM/Del/OJ/DH\(2009\)1051section6.1publicE / 02 April 2009](#) 1051st meeting (DH), 17-19 March 2009 - Annotated Agenda - Decisions - Section 6.1 - Public information version
- [CM/Del/OJ/DH\(2009\)1051section6.2publicE / 02 April 2009](#) 1051st meeting (DH), 17-19 March 2009 - Annotated Agenda - Decisions - Section 6.2 - Public information version
- [CM/Del/OJ/DH\(2009\)1051statpublic / 02 April 2009](#) 1051st meeting (DH), 17-19 March 2009 - Annotated Agenda - Statistics - Public information version

The second annual report on the execution of judgments will be made public on 22 April.

The relevant Interim Resolutions adopted at the meeting are:

The Committee of Ministers supports the ongoing reforms to remedy most frequent violations of the European Convention on Human Rights in Russia (26.03.09)

In its Interim Resolution the Committee of Ministers of the Council of Europe welcomed the political will repeatedly affirmed by the President of the Russian Federation to resolve the problem of non-enforcement of domestic judicial decisions against the State. The Committee called upon the competent authorities to rapidly translate this political will into concrete actions in line with hundreds of judgments delivered by the European Court of Human Rights in favour of large vulnerable groups of the Russian population.

The Committee recognised the Russian authorities' important efforts to resolve the underlying structural problems. It considered, however, that the major effects of the adopted measures yet remain to be demonstrated. Further action is also needed in certain problematic areas such as the enforcement of judicial awards concerning Chernobyl victims, compensation for damages sustained during the military service and the provision of social housing.

The Committee in particular emphasised the pressing need for setting-up of effective domestic remedies, pending the implementation of other comprehensive reforms. Such remedies should ensure at domestic level rapid and adequate redress for violations of the Convention on account of non-enforcement and thus prevent new applications to the Strasbourg Court.

[Link to the Interim Resolution CM/ResDH\(2009\)43](#)

The European Court has already delivered more than 200 judgments finding the Russian State's failure to enforce domestic court decisions in favour of individuals. Under the European Convention on

Human Rights, the European Court's judgments require the adoption by the respondent State, under the Committee of Ministers' supervision, of all measures necessary to grant the applicants appropriate redress and to prevent new similar violations in the future. The Committee of Ministers has been supervising the execution by the Russian Federation of this kind of judgments since the first *Burdov* judgment delivered on 7 May 2002. On 15 January 2009 the European Court delivered a pilot judgment (*Burdov v. Russia (No.2)*, not final yet) holding that Russia must set up within six months an effective domestic remedy against such violations and grant within one year adequate and sufficient redress in numerous cases of non-enforcement still pending before the European Court.

Italy: Execution of judgments of the European Court of Human Rights concerning the excessive length of judicial proceedings, including bankruptcy proceedings (26.03.09)

The Committee of Ministers adopted a new Interim Resolution concerning the excessive length of judicial proceedings in Italy. This new resolution is the follow-up to Interim Resolutions [CM/ResDH\(2007\)2](#) concerning the problem of excessive length of judicial proceedings and [CM/ResDH\(2007\)27](#) on bankruptcy proceedings.

The Committee of Ministers noted with interest the progress achieved through the measures adopted so far in the fields of civil, criminal and administrative proceedings. It underlined however that, given the substantial backlog in the civil and criminal fields (approximately 5.5 million pending civil cases and 3.2 million pending criminal cases), as well as in the administrative field, a final solution to the structural problem of length of proceedings still needs to be found.

The Committee therefore called upon the Italian authorities to pursue actively their efforts to ensure the swift adoption of the measures already envisaged for civil and criminal proceedings and to adopt urgently ad hoc measures to reduce the civil, criminal and administrative backlog. It also strongly encouraged the authorities to consider amending Act No. 89/2001 (the Pinto Law) with a view to setting up a funding system resolving the problems of delay in the payment of compensation awarded, to simplify the procedure, and to extend the scope of the remedy to include injunctions to expedite the proceedings put into question.

The Committee of Ministers also noted that the 2006 reform on bankruptcy proceedings contributed to decrease their number and expedite them by reducing the phase of auditing claims. It called upon the Italian authorities to continue their efforts to ensure that the reform fully contributes to the acceleration of bankruptcy proceedings and to take measures to expedite pending proceedings to which the reform does not apply.

The Committee finally invited the Italian authorities to ensure the implementation of the reforms and to assess their effects as they proceed with a view to adopting, if necessary, any further measures. It will continue examining the implementation of these cases at the latest at the end of 2009 for administrative proceedings, and mid-2010 for civil, criminal, and bankruptcy proceedings.

[Link to the Interim Resolution CM/ResDH\(2009\)42](#)

United Kingdom: the Committee of Ministers' third interim resolution concerning actions of security forces in Northern Ireland (25.03.09)

In a third interim resolution, the Committee of Ministers assessed the United Kingdom's compliance with the judgments of the European Court of Human Rights concerning the lack of effective investigations into deaths in Northern Ireland in which security forces were involved (violations of Article 2 – right to life in cases of *Jordan*, *McKerr*, *Kelly and others*, *Shanaghan*, *McShane* and *Finucane*).

The Committee examined the measures taken by the United Kingdom since the adoption of the second interim resolution in June 2007 and concluded that the issue relating to the concrete results obtained in the investigation of historical cases by the Historical Enquiries Team and the Police Ombudsman can now be closed. In particular, the Committee noted that the Historical Enquiries Team has the structure and capacity to allow it to finalise its work. The Committee also decided, in light of the assurances given by the United Kingdom, to close the examination of the issue relating to the failure by the United Kingdom to comply with its obligation under Article 34 of the Convention on the right of individual petition.

The Committee will continue its examination of the issue regarding the response of the United Kingdom to the Police Ombudsman's Five-Year Review report.

In the cases of *Jordan*, *Kelly and Others*, *McKerr* and *Shanaghan*, the Committee noted with concern that progress with regard to the ongoing investigations has been limited. Therefore, it strongly urged the United Kingdom to take all necessary measures with a view to bringing to an end the ongoing

investigations while bearing in mind the findings of the European Court in these cases.

In the cases of *McShane* and *Finucane*, the Committee noted the progress in the investigatory steps taken and decided to close the examination of these cases with respect to individual measures.

[Link to the Interim Resolution CM/ResDH\(2009\)44](#)

Turkey: No improvement in the situation of the conscientious objector despite judgment of the European Court (25.03.09)

The Committee of Ministers adopted a second Interim Resolution in the case of *Ülke*. In this case the European Court of Human Rights found that the applicant's repeated convictions and imprisonment for having refused to perform compulsory military service on account of his beliefs as a pacifist and conscientious objector amounted to degrading treatment in violation of the European Convention on Human Rights.

Despite the European Court's judgment, the applicant was summonsed in July 2007 to present himself in order to serve his outstanding sentence resulting from a previous conviction. He is at present in hiding and is wanted by security forces for execution of his sentence.

In its Interim Resolution, the Committee of Ministers strongly regretted that, despite the Committee's first Interim Resolution, no concrete steps have been taken by the Turkish authorities to bring to a close the continuing effects of the violation. Therefore, the Committee strongly urged Turkey to take without further delay all necessary measures to put an end to the violation of the applicant's rights. It further urged Turkey to make the legislative changes necessary to prevent similar violations of the Convention.

The Committee will continue examining the implementation of the *Ülke* case at each human rights meeting until the necessary urgent measures are adopted.

[Link to the Interim Resolution CM/ResDH\(2009\)45](#)

B. General and consolidated information

Please note that useful and updated information (including developments occurred between the various Human Rights meetings) on the state of execution of the cases classified by country is provided :

<http://www.coe.int/t/e/human%5Frights/execution/03%5FCases/>

For more information on the specific question of the execution of judgments including the Committee of Ministers' annual report for 2007 on its supervision of judgments, please refer to the Council of Europe's web site dedicated to the execution of judgments of the European Court of Human Rights:

http://www.coe.int/T/E/Human_Rights/execution/

The simplified global database with all pending cases for execution control (Excel document containing all the basic information on all the cases currently pending before the Committee of Ministers) can be consulted at the following address :

http://www.coe.int/t/e/human_rights/execution/02_Documents/PPIndex.asp#TopOfPage

Part III : The work of other Council of Europe monitoring mechanisms

A. European Social Charter (ESC)

Adoption of Committee of Ministers resolutions with regard to Conclusions 2007 / XVIII-2 of the European Social Charter

At the 1052nd meeting of the Ministers' Deputies, held on 25 March 2009, the Committee of Ministers adopted the following resolutions:

- [CM/ResChS\(2009\)5E / 25 March 2009](#)

Resolution on the implementation of the European Social Charter (revised) during the period 2001-2004 (Conclusions 2007, "non-hard core" provisions)

- [CM/ResChS\(2009\)4E / 25 March 2009](#)

Resolution CM/ResChS(2009)4 on the implementation of the European Social Charter during the period 2001-2004 (Conclusions XVIII-2, second part, "non-hard core" provisions)

Workshop on social rights in Switzerland

A workshop entitled "*La Suisse et les droits sociaux : des garanties juridiques à la réalité sociale*" (Switzerland and social rights: from legal guarantees to social reality) was held in Bern on 3 April 2009.

[Programme](#)

The European Committee of Social Rights held a session from 30 March to 2 April 2009. You may find relevant information on the sessions using the following link :

http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp.

You may find relevant information on the implementation of the Charter in States Parties using the following country factsheets:

http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/CountryTable_en.asp

B. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

Council of Europe anti-torture Committee publishes reports on Portugal (19.03.09)

At the request of the Portuguese authorities, the Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has published the [report on its fifth periodic visit to Portugal](#), carried out in January 2008, together with the [response of the Portuguese Government](#).

During the 2008 visit, the CPT reviewed the measures taken by the Portuguese authorities to implement the recommendations made by the Committee after previous visits. In this connection, particular attention was paid to the treatment of persons deprived of their liberty by the police. The CPT also examined in detail various issues concerning prisons, including the treatment of high security prisoners and drug-related matters. In addition, the Committee's delegation visited two psychiatric hospitals, where it focused on the living conditions as well as the legal safeguards afforded to patients in the context of the involuntary admission procedure and of consent to treatment.

In their response to the visit report, the Portuguese authorities provide information on the measures being taken to implement the CPT's recommendations.

The [CPT's visit report](#) and the [response of the Portuguese authorities](#) are available on the Committee's website <http://www.cpt.coe.int>

C. European Commission against Racism and Intolerance (ECRI)

Combating racism in sports: ECRI's advice to governments (19.03.09)

ECRI launched its General Policy Recommendation No.12 on combating racism and racial discrimination in the field of sport. This Recommendation proposes more than 50 concrete measures to member States (1) for ensuring equal opportunities in access to sport for all, (2) for combating racism and racial discrimination in sport in general and (3) for building a coalition against racism in sport. [Text of the Recommendation](#)

Economic crisis fuels racism and xenophobia (20.03.09)

In a joint statement to mark the International Day for the Elimination of Racial Discrimination, ECRI, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and the European Union Agency for Fundamental Rights (FRA) expressed concern that the current economic crisis is beginning to fuel racist and xenophobic intolerance. [Joint statement](#)

D. Framework Convention for the Protection of National Minorities (FCNM)

Poland and Serbia: Adoption of the 2nd cycle Advisory Committee Opinions (20.03.09)

The Advisory Committee on the FCNM adopted 2nd cycle opinions on [Poland](#) and [Serbia](#). These Opinions are restricted for the time-being. They will be submitted to the Committee of Ministers, which is to adopt conclusions and recommendations.

Georgia: Adoption of the first Advisory Committee Opinion (19.03.09)

Following a visit to Georgia in December 2008, the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its first cycle opinion on [Georgia](#). This Opinion is restricted for the time-being. It will be submitted to the Committee of Ministers, which is to adopt conclusions and recommendations. The Opinions of the Advisory Committee are made public upon the adoption of the Committee of Ministers' resolution but can be made public at an earlier stage at the country's initiative.

Liechtenstein : Third State Report (18.03.09)

Liechtenstein has submitted its third [state report](#) in English [and German], pursuant to Article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities. It is now up to the Advisory Committee to consider it and adopt an opinion intended for the Committee of Ministers.

E. Group of States against Corruption (GRECO)

Ninth General Activity Report (2008) of GRECO (26.03.09)

The Group of States against corruption - GRECO has published its [Ninth General Activity report \(2008\)](#) which was presented to the Committee of Ministers by GRECO's President, Mr Drago KOS (Slovenia).

F. Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

Outcome of the 29th Plenary meeting (16-20 March 2009)

MONEYVAL, at its 29th plenary meeting achieved several significant results, including:

- the adoption of the mutual evaluation reports of Montenegro ([executive summary](#)) and Ukraine (executive summary)
- the adoption of the first year progress reports submitted by Bulgaria ([report](#)), Croatia ([report/annex](#)), Czech Republic ([report](#)), Monaco ([report](#)) and San Marino ([report](#))
- the adoption of the second year progress report submitted by Cyprus ([report](#))
- the adoption and publication on 20 March, under Step VI of the Compliance Enhancing Procedures, of a second statement in respect of Azerbaijan
- the adoption of its 2008 Annual Report

The next plenary meeting is scheduled for 21 to 25 September 2009.

Public Statement in respect of Azerbaijan (20.03.09)

MONEYVAL issued a second public statement under Step VI of its Compliance Enhancing Procedures at its 29th Plenary meeting (16-20 March 2009). The [first statement](#) issued by MONEYVAL on 12 December 2008 remains in effect.

Link to [statement on Azerbaijan](#).

G. Group of Experts on Action against Trafficking in Human Beings (GRETA)

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* No work deemed relevant for the NHRs for the period under observation.

Part IV : The intergovernmental work

A. The new signatures and ratifications of the Treaties of the Council of Europe

Cyprus ratified on 27 March 2009 the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism ([CETS No. 198](#)).

San Marino ratified on 18 March 2009 the European Convention on Extradition ([ETS No. 24](#)), and the European Convention on Mutual Assistance in Criminal Matters ([ETS No. 30](#)).

Turkey signed on 19 March 2009 the Council of Europe Convention on Action against Trafficking in Human Beings ([CETS No. 197](#)).

Ukraine ratified on 26 March 2009 the European Convention on the Legal Status of Children Born out of Wedlock ([ETS No. 85](#)), the Convention on Mutual Administrative Assistance in Tax Matters ([ETS No. 127](#)), and the European Convention on Transfrontier Television ([ETS No. 132](#)).

B. Recommendations and Resolutions adopted by the Committee of Ministers

[CM/ResCPT\(2009\)1E / 25 March 2009](#)

Election of members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in respect of Georgia and Sweden.

C. Other news of the Committee of Ministers

1052nd Ministers' Deputies meeting (25.03.09)

On 25 March 2009, in the light of the fourth report concerning compliance by Serbia with its obligations and commitments and the implementation of the post-accession co-operation programme, the Ministers' Deputies welcomed the positive developments which have taken place since the third report, in particular the arrest and transfer to the Hague in July 2008 of Radovan Karadžić, accused of war crimes by the International Criminal Tribunal for the former Yugoslavia (ICTY). They noted the readiness of the Serbian authorities to fulfill the remaining commitments and called upon them to secure full implementation of the remaining commitments as soon as possible.

The Ministers' Deputies held an exchange of views with Mr Karel Kovanda, Deputy Director General for External Relations of the European Commission. The exchange focused on future prospects for co-operation between the Council of Europe and the European Union in the context of the European Union's Eastern partnership initiative.

The follow-up to the 9th meeting of the Co-ordination Group between the Council of Europe and the OSCE held in Vienna on 13 March 2009 was considered by the Ministers' Deputies, who took note of the report of the Chair of the Ministers' Deputies on the results of the meeting. The Group was set up to promote co-operation between the Council of Europe and the OSCE in four priority areas: combating terrorism, protecting the rights of persons belonging to national minorities, combating trafficking in human beings and promoting tolerance and non-discrimination.

Finally, the Deputies held an exchange of views with the Chairman of the Group of States against Corruption (GRECO) and took note of its general activity report for 2008 [[link to document CM\(2009\)34](#)]. The ensuing discussions focused on the contribution of GRECO to attain the goals of the Organisation in the areas of the rule of law and of good governance.

D. Steering Committee for Human Rights

Steering Committee For Human Rights (CDDH) - Reflection Group (DH-S-GDR) – 5th meeting (4-6 March 2009)

As an observer to the CDDH and its sub-committees, the European Group of NHRIs actively participated, together with NGOs^{*}, in the half-day hearing organised by the Reflection Group (DH-S-GDR) on 4th March on the follow-up of the reform of the Court. Both John Wadham, from the UK Equality and Human Rights Commission, and Noémie Bienvenu, from the French Human Rights Commission, and presented the observations of the European Group on different matters under consideration by the Reflection Group. The views of the European Group were put together beforehand by a small working group led by the Irish Human Rights Commission and were then agreed upon as a statement of the European Group by the Group as a whole. They were transmitted to the secretariat and members of the Reflection Group as well as distributed to members of the CDDH at their following meeting (24-27 march).

In the context of discussions around the adoption of a non-binding instrument of the Committee of Ministers on domestic remedies with respect to excessive length of proceedings, the paper draws attention to the role of NHRIs in this matter: first in exercising their statutory function of reviewing the effectiveness of and adequacy of law and practice in the State including reviewing draft legislation for its human rights compatibility; in making specific recommendations to Governments to address structural and systemic deficiencies in their countries and to assist State authorities in changing the law and practice; in considering complaints from individuals or engaging in inquiries or litigation; finally, in discharging their awareness-raising and education functions.

The second main issue was to do with discussions of the Reflection Group on the necessity to enhance States' understanding of the Court's case law contained in judgments of principle and the role of third party interventions for that purpose. The European Group mainly underlines in its statement that NHRIs and the European Group as such have already intervened in cases before the European Court as *amicus curiae* and the advantages it has. It also expresses strong concerns about the use of third party states interventions in that context.

All the views expressed at this hearing, both by the European Group of NHRIs and by NGOs, will be compiled in a report by the secretariat. If you wish to receive a copy of the "views of European Group of NHRIs on reform proposals currently under consideration by the Reflection Group", or need additional information, please contact Des Hogan, from the Irish Human Rights Commission (dhogan@ihrc.ie) or Noémie Bienvenu, from the French Human Rights Commission (noemie.bienvenu@cncdh.pm.gouv.fr).

The final activity report of the Reflection Group was endorsed by the CDDH at its meeting on 24-27 March. It contains the main conclusions emerging from the work undertaken by the CDDH up until 27 March 2009. Section IV of the report contains a summary of its conclusions and proposals for future activities, including to:

- draft a non-binding instrument of the Committee of Ministers on improving domestic remedies for excessive length of judicial proceedings;
- increase the use of third-party interventions in proceedings before the Court;
- continue the Warsaw Pilot Project and consider extending it to other Council of Europe Information Offices;
- study the implementation and impact of Recommendation Rec(2002)13 on publication and dissemination of the Convention and the Court's case-law;
- examine further the possible creation of a judicial committee within the Court to filter applications;
- consider extending the Court's competence to give advisory opinions to national courts;
- undertake further work on a Statute for the Court.

^{*} Amnesty International, the Aire Centre, Interights, Liberty, European Human Rights Advocacy Centre, Justice and the International Commission of Jurists

Part V : The parliamentary work

A. Reports, Resolutions and Recommendations of the Parliamentary Assembly of the Council of Europe

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B. News of the Parliamentary Assembly of the Council of Europe

➤ *Countries*

[Corien Jonker: 'Humanitarian scars of South Ossetian conflict run deep'](#) (16.03.09)

"Following my visit to South Ossetia, I am greatly concerned by the humanitarian consequences of the war between Georgia and Russia, and the humanitarian scars left by the conflict," said Corien Jonker, Chair of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe (PACE), at the end of her two-day visit to the region on 13 and 14 March 2009.

[PACE monitoring co-rapporteurs visit Georgia](#) (25.03.09)

Mátyás Eörsi (Hungary, ALDE) and Kastriot Islami (Albania, SOC), co-rapporteurs on Georgia for PACE Monitoring Committee, began a fact-finding visit to Tbilisi to take stock of Georgia's compliance with its obligations and commitments to the Council of Europe.

[PACE to observe presidential election in 'the former Yugoslav Republic of Macedonia'](#) (18.03.09)

A 13-member PACE delegation, led by Marietta de Pourbaix-Lundin (Sweden, EPP/CD) visited "the former Yugoslav Republic of Macedonia" from 20 to 23 March 2009 to observe the presidential election alongside observers from the OSCE Parliamentary Assembly and the Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

[Elections met most international standards, despite some remaining challenges, observers in Skopje say](#) (23.03.09)

The first round of yesterday's presidential and municipal elections in "the former Yugoslav Republic of Macedonia" met most international standards, although some challenges remain to be addressed, an international election observation mission said in a statement.

[PACE delegation to observe the parliamentary elections in Montenegro](#) (26.03.09)

A PACE delegation, comprising thirteen members and headed by Andreas Gross (Switzerland, SOC), observed the 29 March parliamentary elections in Montenegro alongside observers from the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

[Greece and Turkey should treat their religious minorities according to European standards, says PACE committee](#) (24.03.09)

Both Greece and Turkey should treat all their citizens who are members of religious minorities according to the standards of the European Convention on Human Rights – rather than invoking "reciprocity" under the 1923 Treaty of Lausanne as a basis for refusing to implement some rights.

Approving a report on "Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (Eastern Greece)", the Committee on Legal Affairs of the Parliamentary Assembly of the Council of Europe (PACE) acknowledged the question was "emotionally very highly charged".

* No work deemed relevant for the NHRs for the period under observation.

Nevertheless, it said the two countries should “treat all their citizens without discrimination, without taking into account the way in which the neighbouring state might treat its own citizens”.

In a draft resolution, the committee said the recurrent invoking by Greece and Turkey of the principle of reciprocity as a basis for refusing to implement the rights guaranteed to the minorities concerned by the Treaty of Lausanne was “anachronistic” and could jeopardise each country’s national cohesion.

However, it also welcomed “a degree of new awareness by the authorities of both countries, which have demonstrated their commitment to finding appropriate responses to the difficulties facing the members of these minorities”.

The parliamentarians urged both governments to recognise the “freedom of ethnic self-identification” and to make a series of changes in minority, education and religious policy.

[Draft resolution](#) (provisional version)

[Azerbaijani people vote positively, says PACE delegation present at constitutional referendum \(19.03.09\)](#)

Following the decision of the Azerbaijani authorities to organise a referendum on the amendments to the Constitution of the Republic of Azerbaijan, the Bureau of the Parliamentary Assembly of the Council of Europe (PACE) decided to send a delegation to be present during this referendum.

➤ *Themes*

[Corien Jonker : "Assisted voluntary return programmes offer a mutually beneficial alternative to forced return of migrants" \(27.03.09\)](#)

On 26 and 27 March, PACE Committee on Migration, Refugees and Population organised a hearing in the Hague on forced return of, and assisted voluntary return programmes, for irregular migrants, with a particular focus on the situation in the Netherlands.

[Major conference in Berlin on the need to eradicate impunity in Europe \(17.03.09\)](#)

Council of Europe parliamentarians and leading human rights figures from around the world – including from international courts, NGOs, law firms and universities – gathered at the German Bundestag in Berlin on Monday 23 March for a major conference on “The state of human rights in Europe: the need to eradicate impunity”

[‘Don’t let them get away with it’: pondering, from many angles, ways to reduce impunity\(26.03.09\)](#)

The dilemmas of temporary amnesties, the “turning point” in the fight against global impunity represented by the International Criminal Court, the impunity of Russian soldiers in Chechnya, and what to do when even the UN Security Council violates basic rights were among subjects tackled by parliamentarians, academics and experts during a major conference on impunity in Berlin on 23 March, organised by PACE’s Legal Affairs Committee and hosted by the German Bundestag.

[Renditions in Germany: Dick Marty praises ‘conscientious’ parliamentary inquiry, calls for greater co-operation from authorities \(26.03.09\)](#)

Dick Marty (Switzerland, ALDE), former rapporteur of the Council of Europe Parliamentary Assembly (PACE) on secret detentions and illegal transfers of detainees in Europe, made a statement in Berlin to the Bundestag Committee of Inquiry responsible for investigating the possible involvement of the German authorities.

C. Miscellaneous

[PACE President lauds 'meeting of civilisations' represented by winners of the North-South Prize \(16.03.09\)](#)

Speaking at a ceremony in Lisbon to award the Council of Europe's 2008 North-South Prize, PACE President Lluís Maria de Puig said the two winners represented a "meeting of civilisations" which had marked the Iberian Peninsula in the past. The prize was being awarded to Queen Rania Al-Abdullah of Jordan and former Portuguese President Jorge Sampaio, High Representative of the UN's Alliance of Civilisations initiative. News of the Parliamentary Assembly of the Council of Europe.

Part VI : The work of the Office of the Commissioner for Human Rights

A. Country work

Kosovo^{*}: “Human rights should not be held hostage to current political tensions” says Commissioner Hammarberg (27.03.09)

Thomas Hammarberg, Council of Europe Commissioner for Human Rights, presented his preliminary impressions on the general human rights situation in Kosovo after a four-day visit.

"I have endeavoured to assess the degree of human rights protection for ordinary people, both in the majority and in the minority", the Commissioner said. "As an independent human rights observer, I wanted to make sure that human rights are not held hostage to current political tensions and disagreements."

The Commissioner underlined the importance of democracy built on rule of law, and a functioning justice system. "Trust in the functioning of the court system is crucial. More work needs to be done in order to ensure the independence of the judiciary, as well as professionalism and an absence of corruption."

"Kosovo has a good legislative framework in place, yet I agree that implementation of the norms still needs to be ensured", noted Commissioner Hammarberg. "I have been impressed by the comprehensive and thorough approach to human rights planning as reflected in the authorities' Strategy on Human Rights."

The Commissioner underlined that an independent, competent and well-resourced Ombudsperson Office is fundamental for protecting human rights. "After four previous unsuccessful attempts, I urge the Assembly of Kosovo to elect an Ombudsperson as soon as possible" emphasised the Commissioner, who also underlined the necessity of ensuring that the international intergovernmental structures which are active in Kosovo continue to be held accountable through a credible complaints mechanism.

Mr. Hammarberg expressed deep concern about the lead-contaminated Roma camps in northern Mitrovica. "This is a humanitarian disaster of the most serious nature. It is no less than scandalous that no solution has been found to protect the inhabitants, including children, even five years after it was conclusively established that living in this area was hazardous. I appeal urgently to all those responsible to ensure that the affected families can move without delay to a secure environment and that proper medical care is provided to all those contaminated."

While the Commissioner focused on the rights of minorities, he underlined that there are other human rights issues which should not be forgotten, for instance, the problem of domestic violence and the rights of persons with disabilities. He also discussed the need for further efforts to clarify the fate of the nearly 2 000 persons who still remain missing after the 1999 war.

The Commissioner appealed to governments in Europe to avoid returning by force refugees who have come from Kosovo. "Such deportations should still be avoided and I do not think it is appropriate to put pressure on local authorities to accept such forced returns in the present situation" stated the Commissioner.

[Link to the photo gallery](#)

* "All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo".

B. Thematic work

"After the human rights breakdown during the “war on terror”, the damage must be assessed and corrective action taken” (16.03.09)

“Since 2001, many European governments have allowed themselves to be rushed into hasty responses to terrorism that have undermined basic values and violated human rights. They must now review their own conduct and take corrective action” declared the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in his latest Viewpoint published today. Underlying that the exchange of intelligence information is needed to prevent terrorist acts, Commissioner Hammarberg added that inter-agency co-operation must respect the integrity of the international human rights legal framework and in any case should not result in human rights violations. “The work of intelligence agencies, including their international co-operation, must be regulated in line with human rights standards”, he concluded.

[Read the Viewpoint](#)

Read in Russian ([.pdf](#) or [.doc](#))

C. Miscellaneous (newsletter, agenda...)

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* No work deemed relevant for the NHRSs for the period under observation.

Part VII : Special file : The work of the European Commission for Democracy through Law (Venice Commission)

78th Plenary session (13-14 March 2009)

At this session the Commission has discussed the following issues :

- [amendments to the Criminal Code of Armenia](#) ;
- [the constitutional referendum in Azerbaijan](#);
- [the Georgian law on occupied territories](#);
- [the constitutional and legal provisions relevant for the prohibition of political parties in Turkey](#).

Other opinions adopted by the Commission concerned:

- [the admissibility of a constitutional referendum](#) in and [electoral code of Albania](#);
- [constitutional amendments in Georgia](#) and two amicus curiae briefs for the Constitutional Court of Georgia,
- [freedom to receive information in Armenia](#);
- [the Law on the Constitutional Court of the Palestinian National Authority](#);
- [Statutory Instruments](#) and [judicial power of Bulgaria](#);
- [amendments to the Constitution](#) and on [the election of people's Deputies of Ukraine](#).

Furthermore, the Commission has adopted the reports on [internationally recognised status of election observers](#) and the explanatory report to the Code of Good Practice in the field of Political Parties.

The EU Special Representative for the Southern Caucasus, **Peter Semneby**, Director of Multilateral Relations and Human Rights of the European Commission, **Veronique Arnault**, and the Director of the OSCE Office of Democratic Institutions and Human Rights, **Janez Lenarcic**, have addressed the Commission.

[Documents adopted at the 78th session](#).

You may consult the list of documents of the Venice Commission related to Ombudsmen using the following [Link](#).